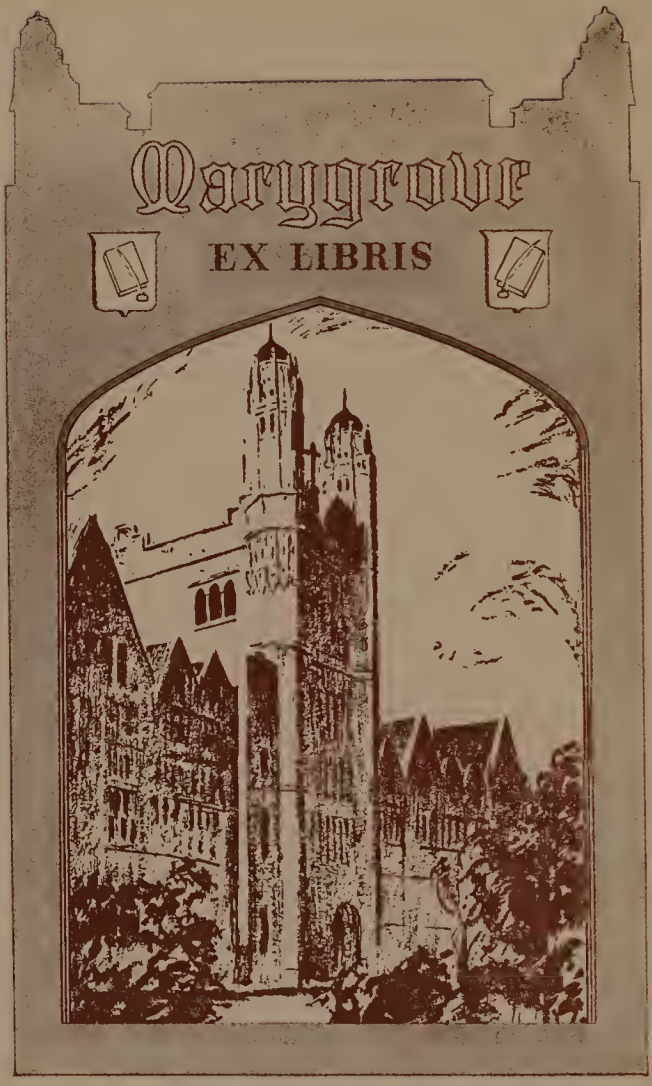
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MEDIEVAL INTERNATIONALISM

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THE CONTRIBUTION OF THE MEDIEVAL CHURCH TO INTERNATIONAL LAW AND PEACE

BY

R. F. WRIGHT

M.A., LL.B., Cantab.
Vicar of Holy Trinity
Kilburn

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PREFACE

AFTER careful inquiry at the British Museum, where most of the research contained in these studies was carried on, and investigation in other likely quarters, no book was forthcoming dealing directly with the contribution of the Medieval Church to International Law and Peace.

A list of the books consulted is given under the Bibliography, but special mention should be made of two writers. Dr. Robert Ward's *History of the Law of Nations*, in two volumes, written over a century ago, has some interesting material on the influence of Christianity on the Common Law of Nations, and there are a number of sections dealing incidentally with the same subject in Sir R. Phillimore's *Commentary on International Law*, in four volumes.

Much helpful and interesting matter has been gathered from a study of the Ecclesiastical Councils.

Authorities have been freely quoted, but not always acknowledged in the form of references; although I trust that they are duly mentioned in the Bibliography. Here I would acknowledge my indebtedness, although sometimes I have ventured to differ from them.

A few words are necessary as to the purpose I have had in view.

Controversy would have defeated my object; the theology of the Roman Church has neither been criticized nor defended, except as regards Papal Sovereignty in the Middle Ages.

Neither has there been any attempt to give even the

merest sketch of the history of the Papacy. This has been done by the Rev. H. K. Mann (in thirteen volumes), *The Lives of the Popes in the Middle Ages*, by Dean Milman and others.

R. F. W.

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INTRODUCTION

"HISTORY", wrote Gibbon, "is little more than the register of the crimes, follies, and misfortunes of mankind." But it must be remembered that this was written by a man who was tracing the decline and fall of an empire which had become morally rotten. In tracing the rise and development of Christian Europe, there will indeed be much which is saddening and sickening, even in the Church itself, but the picture is not wholly dark. In spite of the crimes, follies, and misfortunes of mankind, the Medieval Church, with its Universal Law, was endeavouring to create, out of barbarism and chaos, an ideal upon which modern international law and peace are so largely founded. From the first, the Christian Church was the great reforming power in the Empire. Paganism lacked the vision and the power to initiate and carry through social and moral reform, but the Church had both, and in spite of human weakness and failures, its contribution to international law and peace was truly remarkable.

With its ideal of universal brotherhood, with its allegiance to a universal but unseen King of Love, demanding a purity of life which was in startling contrast with the laxity of morals which was sapping the life and strength of Rome, and insisting on the sacredness of human life, the Christian Church was revolutionizing the world.

To quote the words of Gibbon:

"While the Roman Empire was invaded by open violence or undermined by slow decay, a pure and humble religion gently insinuated itself into the minds of men, grew up in silence and

obscurity, derived new vigour from opposition, and finally erected the triumphant banner of the Cross on the ruins of the Capitol."[1]

On the same spot, which at one time had been the garden of Nero and the scene of the most fiendish of tortures, there was raised a Christian Church which far surpassed the glories of the ancient Capitol. Her bishops, tracing their authority from the humble fisherman of Galilee, succeeded in no mean degree to an international throne, and exercised an authority far greater than that of the Caesars.

By uniting in a spiritual bond the conflicting and anarchical elements which succeeded the downfall of the Roman Empire, and thereby creating a unity which was broader and deeper than mere nationality, by a moral tie which was superior to mere force, the path was being cleared for the coming of a new and better international order. It has been well said that "Christ was the well-spring of a new humanity".

When Europe was a chaos of contending feudal principalities and warring communes, the one thing which united men was the Church to which they belonged. Among its members were English, Welsh, Irish, Flemings, Bretons, Gascons, Castilians, Savoyards, Florentines, Venetians, Pisans, Bavarians, Bohemians, and Saxons, including a spiritual empire stretching from the coast of the Baltic to the shores of the Pacific Ocean.[2]

Neither was this unity one simply of religious observance; it had very far-reaching effects in that common

[1] *Decline and Fall of the Roman Empire*, c. xv, p. 176.
[2] Thorndike, *Medieval Europe*, p. 413.

life of nations. It must be remembered that in the midst of most brutal strength and barbarous ignorance, it was the Christian Society which brought down on Europe the fear of its censures. It stopped war and ferocity where there was no public opinion to control and no power to terrify. Before her excommunication the most powerful men trembled, who would have spurned the law, and monarchs who laid waste were at least prepared to arbitrate, if not to obey.[1]

Dr. Moeller, in speaking of the Middle Ages, says:

"The Papacy and the Frankish Empire seek and find each other, and thereby found one of the greatest epochs in the history of the Church and the world."[2]

"The influence of Christianity", wrote Savigny, in his book on the *Conflict of Laws*, "must least of all be overlooked, which as a common bond of spiritual life, embracing the most diverse nations, has thrown their characteristic differences more and more into the background."[3]

There is then evidence to show that there is a *prima facie* case for the assertion that the Medieval Church was the greatest, if not the only contributor in its age, to the cause of international law and peace.

The following studies will endeavour to prove this in some detail.

[1] J. G. Phillimore, Inaugural Address, 1857.
[2] *History of the Christian Churches*, vol. ii, p. 2.
[3] *Conflict of Laws*, p. 17.

MEDIEVAL INTERNATIONALISM

THE SOURCES AND INFLUENCE OF THE CANON LAW

THE word "sources" has, as Austin points out, a twofold meaning,[1] but for our present purpose it will only be considered in that sense which regards it as the fountain of knowledge: "fontes e quibus juris notitia hauritur".

The Church as a society—or in the Middle Ages as a State—possesses the right to regulate her own life and the lives of her members in accordance with her own principles and laws. That law, according to the Medieval Church, was contained in the Holy Scriptures and in the Christian conscience, the latter being revealed in the writings of the Early Fathers, and in the unanimous voice of the Church, as expressed in the decisions of Councils and the dicta of the Popes.

The Pope as the Head of the Church was said to be the "living law", "having all law in the treasury of his heart", as was claimed by Boniface VIII for the Papacy.[2]

Thus it came to pass that, in the course of time, a great body of ecclesiastical law and custom came into being. Custom, as in all systems of law, became an unwritten code, and was expressly recognized in the Corpus Juris Canonici.[3]

The written laws, whilst ever increasing in number, were codified in the form of "collections" at quite an

[1] *Jurisprudence*, Lecture xxviii.
[2] *De Constit.*, c. i. [3] *Decretum*, i, c. v.

early date. Such, for instance, were "The Apostolic Ordinances", "The Teaching of the Apostles", "The Apostolic Canons", and the like.

There were also a great many decisions upon particular points, given at first by individual bishops, but later in the form of canons of Councils. The number of these canons went on increasing with every Council, but like all laws they were liable to become obsolete. Thus it became necessary to know what canons were really operative. Now, from the beginning of the fifth century, local collections began to be made. Four of them are specially worthy of mention:

Collectarium of Bishop Burchard of Worms, *circa* A.D. 1015.

Collectio Canonum of Deusdedit, *circa* A.D. 1086.

Decretum et Pannormia, Bishop Ivo of Chartres, *circa* A.D. 1117.

and most important of all,

Gratian's *Concordantia discordantium Canonum*, libri tres, *circa* A.D. 1150.

This last-mentioned work has been described as the "corner-stone of the Medieval system of Canon Law".[1]

Thus began the codification of an international system. In the East these codes were arranged and sanctioned in Synod, but in the West they were the work of private individuals. It was in the work of Dionysius Exiguus, at the beginning of the sixth century, that the decretals of the Popes were first incorporated. This was followed

[1] Collins, *Nature and Force of the Canon Law*, p. 19.

by the famous Isidore of Seville in the following century in his contribution to the subject; which was again supplemented, two centuries later, by the *Pseudo-Isidorian Decretals*.

Further compilations of these decretals were made from time to time, but only to be superseded by the codification of Gregory IX in 1234, which consisted of five books which were hereafter to be used exclusively *in judiciis et scholis*. Later decretals formed the *novellae constitutiones*, and from these arose the *Liber Sextus* which Boniface VIII caused to be written and presented to the Universities of Paris and Bologna. To these must be added yet another collection in 1317, known as the "Clementines", whilst in 1500 was added the *Decretals Extravagantes*. Thus came into being the Corpus Juris Canonici. From humble beginnings the Canon Law had grown into a mighty system. At first it asserted its right to stand beside the Civil Law, but finally to supersede it. The Civil Law might be the *jus soli*, but here was the law of heaven, *jus poli*.[1] The time had now come when the Hildebrandine Papacy could insist that, subject to small variations, the universal Church had a common law[2]: and it may be added that nowhere outside of the Canon Law, was there any Common Law of Nations to be found.

The Canonists, whose influence was unshaken till the time of the Reformation, treated from a moral and ecclesiastical point of view most, if not all, of the important doctrines of international law.[3]

[1] Pollock and Maitland, vol. i, p. 112.
[2] *Ibid.*
[3] Oppenheim, vol. i, p. 58.

It has so often been assumed, if not definitely asserted, that Hugo Grotius in the seventeenth century was the founder of International Law, that it may be stated here that the following pages will endeavour to show that Dr. Figgis was nearer the truth when he said that, "International Law is a sort of legacy of the Middle Ages." [1] In speaking of the Christian era before Grotius, Sir Robert Phillimore says:

"The language, the teaching, the system of a representation of different nations, the very forms of the assembling of the Councils of the Church, the notion of a common International Tribunal, the authority of the Pope during ages steeped in intellectual ignorance and moral grossness, contributed to preserve some idea of the duties and rights of nations." [2]

Indeed, it was the awful lawlessness which prevailed after the break-up of the Canon Law influence, that caused Hugo Grotius to write his book "concerning war and peace", in 1625. He writes:

"I saw prevailing throughout the Christian world, a licence in making war, of which even barbarous nations would have been ashamed." [3]

Nevertheless, when he wrote these words, the worst horrors of the "Thirty Years' War" had not taken place. The importance of the contribution of Grotius to world peace cannot be over-estimated, but it should be remembered that he was in a very real sense "the heir of the Middle Ages".[4] In his book he enumerates the sources of International Law as being, *ipsa natura*, *leges divinae*,

[1] *Gerson to Grotius*, Lecture vi.
[2] *Commentary on International Law*, vol. iii, p. xix, Preface.
[3] *De Jure Belli ac Pacis*, Prolegomena, s. 28.
[4] Lawrence, *Principles of International Law*, p. 33.

mores et pacta.[1] These it will be shown are intimately connected with the Canon Law, and must be interpreted in the light of Christianity, for indeed natural law needed a conscience to interpret it, and it was the faith of the Church which, according to Bartolus, introduced that *speciale jus gentis fidelis*. Divine Law and Canon Law were regarded as the same thing in the Middle Ages; the Church being regarded as the guardian and expounder of such law as well as its source. Customs it softened and purified, as the nations became converted to the faith. Agreements were often made under the power of the Church, which was often the only Society possessing the means of peaceful enforcement.

Before seeking to investigate these claims in some detail, it may be well to remember that in the Medieval Universities which played so important a part in international affairs, Canon Law formed the most important faculty in almost every university, with some few exceptions, but this will be discussed in its appropriate chapter.

[1] *De Jure*, Prolegomena.

THE SOVEREIGNTY OF THE PAPACY

THE term "Sovereign Pontiff", as applied to the Bishop of Rome in the Middle Ages, was no mere courtesy title. He was an ecclesiastical Prince, ruling an International State with Sovereign power, as this chapter will endeavour to prove. This subject is one to which very slight allusion, if any, is made in the writings of early international jurists, although certainly Grotius, writing in the seventeenth century, speaks of the untenable position of those who assert the *jus Ecclesiae* over nations occupying the hitherto unknown parts of the earth. Moreover, it is a subject which has called forth conflicting opinions by more modern authorities.

Dr. Figgis tells us that:

"in the Middle Ages the Church was not a State, but THE STATE. The Pope was the supreme dispenser of law, the fountain of honour, including regal honour, and the sole legitimate source of power, the legal, if not the actual founder of religious orders, the supreme judge and divider among nations, the guardian of International right, and the avenger of Christian blood."[1]

A similar estimate is given by another authority who views the subject from a somewhat different angle. Professor Maitland says:

"The Medieval Church was a State. We could frame no suitable definition of a State which would not comprehend the Church. What has it not that a State should have?"[2]

To this he adds:

"At various points it became a model for the constitutions of other and secular States."

[1] *Gerson to Grotius*, p. 5.

[2] Maitland, *Roman Canon Law in the Church of England*, p. 100.

On the other hand it is asserted by Sir Robert Phillimore that:

"in the body of the Canon Law are contained principles and doctrines utterly subversive of the independence of States, and inconsistent with the first principles of International Law."[1]

Let us now consider how far and under what conditions the Papacy in the Middle Ages possessed Sovereignty. The question first arises, what is meant by a State, and what is essential to Sovereign power? A State has been defined as a

"community, the members of which are bound together by the tie of common subjection to some central authority, whose commands the bulk of them habitually obey."[2]

It can hardly be denied that the Church could, with a great measure of success, claim this in the period under review. The question as to the necessity of possession of territory asserted by some, but denied by Westlake, need not concern us, because the Church by the sixteenth century possessed from one-third to one-fifth of the soil of Europe.[3]

Sovereignty has been defined as that power possessed by the individual or individuals, to whom obedience is given. In addition, that central authority must not render a like obedience to any earthly superior.[4] It is this last clause which has led many to place our subject outside the realm of International Law. Brevity demands that the following points must suffice for detailed arguments.

[1] *Commentary*, vol. ii, p. 372.
[2] Lawrence, *Principles of International Law*, p. 55.
[3] *Cambridge Modern History*, vol. i, p. 621.
[4] Lawrence, p. 56.

1. We are dealing with Medieval ideas of Sovereignty.
2. Even to-day, part-Sovereign States come within the sphere of International Law.
3. Jurisprudence has long taught us that for every "right" there is a corresponding "duty". Freedom always entails its restrictions.
4. The present "League of Nations"—which will be discussed in a separate chapter—entails some limitations on freedom; but does not destroy Sovereignty.

The evolution of Sovereignty among the nations of the world is much the same probably in each case. The Aryan groups agree in exhibiting a uniform type of polity. We always find them ruled by a chief, a ring of wise men, and a general assembly.[1] It is much the same in the case of the Papacy. The Pope was the visible head of the Christian State. He was elected and advised by the College of Cardinals; but the larger questions were decided in the Church or Oecumenical Councils, as we shall see when considering the subject of Arbitration.

But before investigating the Papal claims to Sovereignty, it will be convenient to give a brief sketch of the history and function of the

College of Cardinals [2]

Originally every Church was governed by the bishop, who was assisted by a synod or senate of his clergy. Those who were attached to particular Churches were

[1] Carter, *History of English Legal Institutions*, p. 5.
[2] For this subject *vide* Phillimore, *Commentary*, vol. ii, s. ccccxxvii.

called "Incardinati" to distinguish them from those who were temporary or auxiliary. Thus the city clergy became the advisers. Their name became changed to "Cardinales". With the pre-eminence of the Bishop of Rome, there came a similar distinction to those cardinals. They eventually claimed jurisdiction even over bishops, except the Pope; and, in regard to the Papacy, they claimed and obtained the right of election.

In the Council of Pisa (1409), when the Papal Schism was rending the Church, the Cardinals maintained that they had the right to convoke a council which might judge between the claims of Benedict XIII and Gregory XII, and the two Popes were cited to appear before the Council. Later, in their absence, the rival Popes were both declared contumacious by a sentence, which was affixed to the church door, and Alexander V was duly elected.

The question had arisen as to whether the Pope could be deposed; and, if so, by whom.

Two opposite answers were given by two different schools of thought.

The Ultramontane Canonists claim that the trial and deposition of the Sovereign Pontiff would be *ultra vires* on account of his infallibility, but the cismontane Canonists assert the superiority of a General Council, that the Pope is not exempt from the *jus commune* which binds every bishop, and that certain Popes have been lawfully deposed.

It is necessary to remember that Papal Infallibility was decreed as a dogma as late as the Vatican Council in 1870. Furthermore, the Council of Basle decreed:

1. That a General Council is superior to a Pope, and that the latter owes obedience to it.
2. That the Pope may be punished for disobedience to its decrees.
3. That the College of Cardinals should remonstrate with an erring Pontiff, and, if he do not amend, should denounce him at the next General Council.

After the death of Pope Martin V in 1431, the Council agreed in conclave upon certain articles, the effect of which was to grant them a share in the revenues and jurisdiction, both spiritual and temporal, of the Papacy; and did according to a high authority alter permanently the conditions of the Sovereignty of the Pope.[1] The number of the Cardinals has varied, although fixed by different Councils. They are appointed by the Pope, and during the Avignon Schism (1378–1417) both the French and the Roman popes added considerably to their number in order to increase their partisans.

The Council of Trent decreed that they should be chosen *ex omnibus Christianis nationibus*, thus giving an international character to the Sacred College.

It appears to have been the custom for certain nations to be allowed to nominate a cardinal as the protector of their interests.

According to rule and usage, no one is eligible for the Papacy who is not a cardinal, but, according to the Canon Law,[2] it would seem that the election of another person, even a layman, would not be null and void. Therefore, Maximilian's expectations were not without

[1] *Vide* Farini, *Lo Stato Romano*, iv, 323, quoted by Phillimore.
[2] *Dist.*, 79, c. 3, Oportebat.

the pale of possible gratification, for he, like one of his predecessors, had some idea of making himself Pope and the Papacy hereditary.

But apart from the fact that the Cardinals elect the Pontiff from their own number, they have an important sphere as advisers.

They advise the Pope:

1. *In consistorio*, that is, in the assemblage in the Papal Palace in the Pope's presence.
2. *In congregationibus*, that is, in certain colleges or committees of different official persons, to which certain portions of Papal Government are delegated. The highest Roman tribunal, the Rota Romana, consists of twelve auditores: one French, one German, and the rest Italian.

It will appear in the following pages that the Medieval Church as an international institution had no equal in that period, and the Cardinals formed an important part of its international constitution. Canonists claim that the whole Church of Christ is committed to the charge of the Pope, and as he cannot be present everywhere, he sends his representatives in the person of the Cardinals, armed with his authority, into all parts of the world. They were Medieval *Ambassadors*.

We must now return to the subject of

The Sovereignty of the Papacy.

Christianity, from its inception, would not accept any status which was short of being international. It

began by being uncompromisingly antagonistic to the State religion. The Church's commission was: "Go ye into *all the world* and preach the Gospel",[1] and the Church has endeavoured to fulfil that mission. An international Church came to recognize a Sovereign Pontiff, although not without much opposition from the Eastern Church; but the history of that controversy cannot here be traced in any detail.

By the time of Constantine, the authority of the Bishop was given State recognition. The Emperor's rescript (A.D. 314) declared that the sentence of the Bishop must be regarded as that of Christ Himself.

At the Council of Toledo, A.D. 400, the Bishop of Rome is spoken of, for the first time simply as "The Pope" —*per Papam*.

By the fifth century we come to more emphatic statements in the Codes.

Valentinian III issued, in A.D. 445,[2] an edict ordering other Churches to recognize as supreme the authority of the Apostolic See of Rome, in accordance with "St. Peter's charge, given by Christ and decreed by the Council of Sardika" a century before. Thus Emperors encouraged the supremacy of Rome, even when the seat of the Empire was transferred to Constantinople. Theodosius II indeed inserted in his Code an ordinance that all nations subject to him should receive the faith, which St. Peter had delivered to the Romans,[3] and Valentinian III forbade the Bishops of the Provinces to depart from

[1] St. Mark xvi. 15; St. Matt. xxviii. 19.
[2] Wylie, *History of Protestantism*, vol. i, p. 9.
[3] Phillimore, vol. ii, p. 358.

ancient usage without the sanction of the "Venerable man, the Pope of the Holy City".[1] By the end of the century, ecclesiastical Sovereignty was firmly established.

At the Council of Rome, A.D. 496, the distinction between the ecclesiastical and the secular powers was defined by Gelasius—the Pope presiding. It was then asserted—although some doubt as to the genuineness of the record has been expressed—that the Emperor has not the title of Pontiff, nor the Pontiff the regal dignity. GOD has separated the two powers, so that the Christian Princes have need of the Pontiffs to obtain eternal life, and it is the duty of Pontiffs to obey the imperial ordinances in all things temporal.

But, up to this time, according to Gibbon, both the Bishops of Rome and Constantinople "were nearly equal in ecclesiastical rank and jurisdiction".[2] In the time of Gregory the Great, John, the Patriarch of Constantinople, openly assumed the title of Universal Bishop, thereby claiming spiritual Sovereignty over the whole Christian world; but the letters written by Gregory to the Emperor, the Patriarch, and certain bishops, contain protests against these "foolish, offensive, and unchristian appellations", as the "precursor of Antichrist". A century later Gregory II, writing to Leo, the Iconoclast, says: "Are you ignorant that the Popes are the bond of union, the mediators of peace between East and West?" [3]

The restoration of the Western Empire by Charlemagne was followed by a still greater separation of the

[1] *Codex Theodosius*, xvi, 1–2.
[2] *Decline and Fall of the Roman Empire*, c. 49.
[3] Gibbon, *Decline and Fall of the Roman Empire*, c. 49.

Latin from the Greek Church. Between A.D. 857 and 886, Pope Nicholas I and the Patriarch Photius had mutually denounced and deposed each other. But it was not till the year 1054 that the Pope sent his legates to excommunicate formally the Churches of Greece and the Patriarch of Constantinople in his own Metropolis, and to deposit the Latin anathema on the altar of St. Sophia. The Council of Florence, A.D. 1039, had failed to unite them and they have remained apart ever since. We will confine ourselves therefore to the Roman Church and Roman Canon Law.

The influence of the Community of Cluny on this Medieval theory of Papal Sovereignty cannot be over-estimated. Religious Houses and Orders had been more or less independent and certainly national. Cluny insisted on an International Church Order with a Sovereign Pontiff. With its illustrious Hildebrand, it exerted all its powers to make the Church a great unifying and reforming force.

The year A.D. 752 was one fraught with the most important issues both for Church and State in France, and affected the International relations of every State with the See of Rome. Pepin-le-Bref had invoked the aid of religious sanction to secure the throne, and in this year caused himself to be crowned in the Cathedral of Soissons by St. Boniface, first Archbishop of Mayence. A compact between the spiritual and the secular powers followed. Stephen II consecrated Pepin anew in the Church of St. Denis, and at the same time also his two sons, Charles and Carloman. He absolved the consecrated usurper from the oath of allegiance which he had sworn

to Childeric, and called upon the Frank lords, in the name of Christ and St. Peter, to be faithful to their new Sovereign. In return the King drove out the Lombards from the Exarchate and conferred the fertile provinces, comprised under that name, upon the Bishop of Rome, declaring with an oath that he had embarked upon the contest not for the favour of many, but *pro amore Petri et venia delictorum.*[1]

What Pepin began, Charlemagne completed. The hands of the latter's successors were too feeble to hold together their vast dominions, from the division of which sprang the distinct nationalities of States, which composed the Commonwealth of Europe. The weakness of the Temporal Power gave scope for the strength and unity of the Spiritual Power to gain sovereignty; but, of course, it was not without a struggle. Conflict between Church and State arose. The Emperor demanded his *Jura majestatis circa sacra*, the principal of which were:

1. *Jus advocatiae*—the right of protecting the Church establishments in his dominions.
2. *Jus cavendi*—the right to prevent laws for national clergy which were contrary to civil obligations.
3. *Jus inspiciendi*—the right of inquiry regarding administration of the temporalities of the Church and the rectification of abuses.

But the popes resisted all, more or less successfully. They ceased to date their Acts from the years of the Emperor's reign and to stamp their coins with his impress. Lay investiture was refused. The Sovereign was

[1] Ranke, *The Popes of Rome*, vol. i, c. i, p. 14.

bound to nominate or confirm the selected prelates. The Prefect of Rome was required to take the oath of homage and allegiance to the Pope instead of to the Emperor. The Empire was claimed as a fief of the Roman Church. Whereas the secular power had claimed the right of nominating or confirming the Chief Pastor of the Church, it was now claimed by the Church that, under special circumstances, she could depose one Sovereign and crown another. Hermann of Luxemburg was set up as an anti-Emperor in opposition to Henry IV. It will be remembered that it was this Henry who stood for three days bare-footed in the snow waiting outside the Castle at Canossa, in penitence, for Gregory to remove the excommunication. Pope Innocent III "probably deserves to be called the greatest monarch of the Middle Ages. He wielded a wide international authority". He claimed to be supreme over kings and feudal lords of Europe and over barbarous nations also. As Master of the Laws he claimed the right to give dispensation—*de jure supra jus dispensare.*[1] The right to reserve cases for his own judgment was claimed—*casus Papae reservati.* He interfered to stop wars and to settle disputed succession to thrones. The coronation oath of Peter II of Aragon is significant:

"I, Peter, King of Aragon, confess and swear that I will ever be obedient vassal of my lord Pope Innocent, and his Catholic successors, and of the Roman Church. . . . I will strive to establish peace and justice in all the territory subject to my control."

Tribute to the Roman See was fixed at 250 gold pieces

[1] *Decretals of Gregory*, iii, t. 8, c. 4.

per annum. Within the first year of Innocent's pontificate, he had induced Richard, King of England, and Philip Augustus of France, to sign a five years' truce. After Richard's death, Philip seized upon some of the English possessions in France, and again the Pope was ready to arbitrate.

The relations between the next English monarch—John—and the Papacy are so well known that they scarcely need recording here.

1. The Pope refuses the King's candidate for Canterbury.
2. In the year 1208 England was under an Interdict, and the following year John is excommunicated.
3. Subjects were then freed from their oath of allegiance and allies from their treaties.
4. John was deposed and the throne offered to Philip Augustus, who began to prepare an invasion.

The Papal Sovereignty was working in Italy and Germany at the same time. This power of excommunication was not infrequently used, neither did it stop short of monarchs, however powerful.

Papal supremacy reached its height under Innocent III (1198–1216), who was known for his legal as well as his theological learning. He was a Law student at Bologna and Paris, and granted to the latter University some of its earliest privileges. He also filled his Curia with Canonists and jurists from Bologna.

Before giving our attention to some of the outstanding Canons and documents relating to International Sovereignty, it may be well to quote the words of one who

cannot be charged with prejudice in favour of this Pontiff. G. W. Cox in his book, *The Crusades*, says:

"At the age of thirty-seven—an age without example perhaps in the annals of the Papacy—Lothair, a Cardinal, had been chosen Pope by the unanimous vote of all the Cardinals . . . at a time when every other power seemed to be tottering, if not in the very throes of dissolution. The Byzantine Empire was in its decrepitude: the Latin Kingdom of Palestine was reduced to a mere strip of coast: an infant was king of Naples: the French king, Philip Augustus, was paying the penalties of an evil life: the man who was hoping to wear the English crown was the vindictive and despicable John whose treachery had slain his father. Everywhere was disunion, faction and deadly hatred. In the midst of this chaos appeared the one man whose serene tranquillity based on a consciousness of superhuman commission, and on the sanction of a divine law, was undisturbed by the storms raging around him. The influence righteously acquired by Leo and Gregory the Great, and vastly extended by Gregory VII, was wielded with ever greater effect by the youthful Pontiff whose eye surveyed with calm yet exhaustive scrutiny the troubled scene of European politics."[1]

It must be remembered that some of the greatest lawyers of the Middle Ages were ecclesiastics. Besides Innocent, there were other famous Canonists who became Popes in the persons of Alexander III, Gregory IX, and Innocent IV. A vast body of Canon Law was being accumulated, the history of which is dealt with elsewhere.

We now come to the examination of the documentary evidence for the Papal claim to Universal, or International Sovereignty.

There are two documents, both admittedly Medieval, but whose exact date cannot be fixed. One is the *Dictatus*, the other is the ancient Bull, "In Coena Domini." Among

[1] p. 139.

Hildebrand's papers was found a list of twenty-seven propositions concerning powers possessed or claimed by the Popes. This is known as the *Dictatus*. That this memorandum was the work of Gregory has been doubted since some of its propositions are contradicted, so it is asserted, by his undisputed works. But Baronius [1] maintains that it was formulated at the Council of Rome in A.D. 1076, at which Council, Henry of Germany was excommunicated, anathematized, deprived of his kingdom, and his subjects absolved from their oath of allegiance.

This view is also supported by a modern authority. Z. N. Brooke says:

"The recent work of Father Peitz and others has demonstrated that the Registrum Gregorii VII is the actual register of the Pope's letters kept by the Papal chancery. This establishes the authenticity of the Dictatus Papae of 1075 with its extreme claims as a genuine expression of papal theory at that time."[2]

But whatever its date, it illustrates the Sovereign powers claimed by the Medieval Papacy and Canon Law at an early stage in its history, for it asserts:

that the Pope is above criticism; never errs;
that the Pope is supreme over all bishops and even a Church Council;
that the Pope is supreme over the State, the Laws, and literature.

These prerogatives are, perhaps, more extensive than Gregory attempted to secure in practice, but his successors in the following centuries certainly aimed at their fulfilment and with a very great measure of success.

[1] Landon, *Manual of Councils of the Church*, vol. ii, p. 105.
[2] *Cambridge Medieval History*, vol. v, p. 57.

We now turn to the second undated Bull, "In Coena Domini." This Papal Statute, at one time, greatly disturbed the peace of Europe. In France it has caused wide-spread opposition from the State, and when its introduction was suspected, the temporalities of certain bishops were confiscated, and those who obeyed the Bull were treated as State criminals. The seventeenth article of the Gallican Church rejected it.

The Ultramontane Canonists claim that this document is so ancient that its origin cannot be discovered. The earliest date of a written copy, so far to hand, is 1365,[1] but it is known that a ban of this kind was solemnly uttered "In Coena Domini" from the thirteenth century.[2] As, however, this Bull will come under review in regard to Sea Laws, it is sufficient here to state some of its claims to Papal Sovereignty. It excommunicates and anathematizes all—

1. heretics and schismatics and their abettors, and those who read or print their books;
2. persons and Universities which appeal to a future Council;
3. pirates, corsairs, and maritime freebooters;
4. those who seize the goods of ship-wrecked persons.

These last two provisions are indicative of the Pope's claim to be International Judge.

5. those who impose new tolls without the Pope's licence;
7. those who supply Saracens or Turks with arms or aid.

[1] Phillimore, vol. ii, p. 396.

[2] Moeller, vol. ii, p. 312.

The next four refer to those who come to the Roman Court.

12. those who injure persons having recourse to the Roman Court for matters of business and also pleaders of causes;
13. those who appeal to the Secular Powers against "letters Apostolic";
15. secular judges who try ecclesiastical persons: those who publish or execute ordinances or pragmatics prejudicial to ecclesiastical liberty;
17. those who sequester Church revenue;
18. those who exact contributions from ecclesiastical persons;
20. those who occupy the city of Rome, and other cities and provinces and places belonging to the Roman Church and who usurp her jurisdiction.

Among the territorial possessions are enumerated the kingdom of Sicily, the islands of Sardinia and Corsica.

21. Asserts that this Bull remains in force until another similar process be issued by the Pope for the time being; that there shall be no absolution from such except by the Pope, except in the case of *in articulo mortis*.

The Bull also declares that the fixing of these articles upon the church doors of St. Peter and St. John of Lateran shall be deemed personal service upon everybody. It was published every Holy Thursday in Rome, and the Canonists hold the maxim, *ignorantia juris neminem excusat*.

Examination must now be made of certain definite titles of the Canon Law and of the historical circumstances which called them forth.[1]

The death of the Emperor, Henry VI, in the year 1197, was the signal for contending parties to strive for the crown. Pope Innocent III had been appointed Regent of Sicily and guardian of the little Prince Frederick by the Empress; but claims to the throne were made by Philip of Suabia and Otto of Brunswick. Civil war followed and both parties appealed to the Pope, who was called upon to arbitrate between the two. Now the unfitness of Philip was indisputable; he had been excommunicated by the Pope for despoiling the Church and as the Bull says:

"sunt enim notoria impedimenta Ducis: scilicet excommunicatio publica, perjurium manifestum, et persecutio divulgata, quam progenitores ejus et ipse praesumpserunt in Apostolicam Sedem et alias Ecclesias exercer."[2]

Both princes were crowned, but Innocent III sent his legate into Germany, ordering the princes to acknowledge Otto. Whereupon the supporters of Philip lodged their complaint with the Pope, whose reply forms the contents of this part of the Canon Law.

Innocent recognized that by law and custom the power of electing the monarch is vested in princes, but claimed that princes ought to acknowledge, and had acknowledged, that the right of examining the person elected belonged to those who, by laying on of hands, consecrated and crowned these rulers:

[1] For an interesting but adverse criticism of these titles, *vide* Phillimore, vol. ii, c. 4.

[2] *Decretals of Gregory*, ix, c. 34, t. 6, b. 1, "Venerabilem."

"est enim regulariter et generaliter observatum, ut ad sum examinatio personae pertineat, ad quem impositio manus spectat."

It was asserted that the legate had acted, not primarily as judge or elector, but as denouncer of an improper choice.

A few years later the same Pontiff wrote to the Emperor at Constantinople complaining of the injury done to the Patriarch of that city, by placing him on a footstool on the left of the throne. In this decretal [1] the Emperor is shown the folly of imagining that the text in 1 Peter ii. 13 means that the priesthood is, in any way, subject to the Temporal Power.

"Submit yourselves to every ordinance of man for the Lord's sake: whether it be to the king as supreme . . ."

Different explanations are given, but the last is curious and significant. Church and State are likened to the Sun and Moon; and in that order. The Church is the Sun, and therefore the greater. Phillimore says that this means that all the kingdoms of the earth are subject to the Church in all respects, and therefore to the Pope. But, as a German writer, Walter,[2] points out,

"it maintains no more than that Christendom was divided between the authority of the king and the Church. The Pope as the head of the Church was the central point of spiritual life."

This latter explanation is certainly in keeping with the following decretal [3] issued by the same Pontiff.

A *denunciatio* had been sent by John of England to Innocent, against Philip, charging him with a breach of truce

[1] *Decretals*, c. 6, d. 33, b. 1: "De Majoritate et Obedientia."
[2] *Kirchenrecht*, s. 41, quoted by Phillimore.
[3] *Decretals*, b. 2, t. 1, c. 13: "Novit ille."

made between England and France. Philip objected to Papal interference, and this called forth from Innocent this decretal in A.D. 1204. In it he asserts that he did not use his authority *judicare de feudo*, but that it was his duty *decernere de peccato*. Moreover, John told to the Church the offence of his brother king, in accordance with Scripture,[1] and therefore the Pope must hear the cause either by himself or through his legate. He points out that the Emperor Theodosius had even laid it down in his code that, at any time, and in any suit, the appeal of either plaintiff or defendant to Rome, put an end to every inferior jurisdiction.

In addition, breach of faith to a treaty—*rupta pacis foedera*—appertained to the Church—*ratione causae*. After events need not detain us here.

In A.D. 1212 Emperor Frederic II began his reign, and for nearly forty years waged war against Rome; but only to be defeated and in A.D. 1245 deposed by a sentence[2] of Innocent IV with the advice of the Council of Lyons. It states that the sentence is given on the following grounds:

1. His frequent perjury, shown in his violating the peace between the Church and the Empire.
2. His sacrilege in imprisoning certain cardinals and prelates on their way to the Council convened by the Pope.
3. He had harassed both ecclesiastics and laymen in the kingdom of Sicily, which he had received as a

[1] St. Matt. xviii. 17.

[2] Boniface VIII, *Decretals*, b. 8, title: "De Sententia Re Judicata"—"Ad Apostolicae."

fief from Rome, and which he had exhausted by his tyranny.

4. He had entered into negotiations with the Saracens and carried on a criminal intercourse with Saracen women.

This Bull, which was received as law in various parts of Christendom, was based on the text of St. Matt. xvi. 19:

"Whatsoever thou shalt bind on earth, shall be bound in heaven."

This sentence was published in England by Henry III, and the Ecclesiastical Princes of Germany elected a new King of the Romans.

The second Council of Lyons, held thirty years afterwards, confirmed the election of the Emperor Rudolph, the renunciation of Alphonso king of Aragon to the Imperial dignity, and the excommunication of those who should interfere with a priest publishing Ecclesiastical censures against a Sovereign.

Boniface VIII sought to enforce the decree laid down by the third and fourth Lateran Councils that the State had no authority over the property of the Church, for Philip IV had taxed the clergy to help to pay for his wars with Edward I of England. In this decretal,[1] published in 1296, Philip is condemned. It declares that all secular authorities imposing, and all spiritual authorities paying, any taxes without the consent of the Pope, shall incur excommunication *ipso facto*, from which they shall not be relieved, even *in articulo mortis*, without the special licence of the Pontiff.

[1] Sexti, *Decretals*, b. 3, t. 23, c. 3: "Clericis Laicos."

Boniface VIII certainly claimed Temporal Power, or at least a Spiritual Sovereignty over it. In his contest with Philip, in the year 1302, the Pope sent to him the Bull "Ausculta Fili", which claimed that he, and all other kings, were subject to the Papacy.

"Let not thyself be persuaded that thou hast no superior over thee and that thou dost not stand under the highest hierarch: this were madness, and he who stubbornly asserted it would prove himself an unbeliever."

He also set before him many of his offences, and especially that of debasing the coin of the realm. Philip was urged to make peace with the Church and prepare for the Crusade, a striking instance of the Pope's claim to international authority. He bases his authority on a text from Jeremiah i. 10:

"See I have this day, set thee over the nations, and over the kingdoms, to root out and to pull down, and to destroy, and to throw down, and to build, and to plant."

This claim, however, was not acknowledged by the King, so the next step was a Council at Rome, in the same year, to promulgate the famous decretal "Unam Sanctam",[1] in which is set forth the doctrine (argued from different texts of Scripture) of the supremacy of the Spiritual Power over the Temporal, in these words:

"Porro subesse Romano Pontifici omnia humanae creaturae declaramus."

Fleury maintains that the claims of this Bull are not free from ambiguity. It may be well therefore to quote the Pope's illustration. He says that the Bible warrants

[1] *Extrav. Comm.*, b. 1, t. 8: "De Majoritate et Obedientia."

that there are two swords in the Church—the spiritual and the temporal. The former is to be employed *by* the Church, whilst the latter is to be used *for* the Church by the hand of the Prince, in accordance with the order and permission of the Pontiff. Moreover, one must needs be subject to the other. The temporal, he claims, is under the spiritual.

In 1304, Benedict XI, the gentle successor of Boniface VIII, by another decretal [1] took away the punishment from the clergy who paid such taxes, provided that they had first deliberated in synod and agreed that such were a necessity for the general good: but even here, the Pope was first to be consulted.

Just as Benedict had tempered the Bull of his predecessor, so now Clement V sought to soften "Unam Sanctam", by another Bull, "Meruit",[2] which declared that the previous Bull did not subject France to Rome any more than it had been previously, and that no prejudice to royal or national rights was intended, and that all such rights of that country should be considered:

"in eodem esse statu quo erant ante definitionem praefatam."

It may suffice to quote two more Bulls by the same Pope.

It was asserted [3] in definite terms that the right of examination and approbation of the electors' choice of a monarch of Rome, as well as his coronation, belongs,

"eidem Ecclesiae, quae a Graecis imperium transtulit Germanos:"

[1] *Extrav. Comm.*, b. 3, t. 13: "De Immunitata Ecclesiarum."
[2] *Ibid.*, b. 5, t. 7, c. 2.
[3] *Clementine Constitutions*, b. 2, t. 9: "Romani Principes," "De Jurejurando."

also that the oath taken by the Emperor was not merely one which bound him to defend the Church, but was that of feudal allegiance. The king was bound never to enter into contract or treaty with anyone not in communion with the Catholic Church, or enemies of that faith, because

"si sub dissimulatione pertranseat, vel silentio pallietur, possit in magnum et evidens praejudicium Ecclesiae redundere."

In the dispute between Henry and Robert King of Naples, the Pope, in annulling a procedure which, according to Phillimore, was admittedly an unjust one, expresses his authority over all kingdoms in the following words:

"Nos tam ex superioritate, quam ad imperium non est dubium nos habere, quam ex potestate, in qua (vacante imperio) imperatori succedimus." [1]

These Bulls were followed by another from the next Pope, John XXII, in 1318.[2]

After Henry's death, this Bull was published, and duly inserted in the Canon Law. It claimed that in regard to the government of the Empire,

"Cum in illo ad secularem judicem nequeat haberi recursus, ad summum Pontificem, cui in persona beati Petri terreni simul et caelestis Imperii jura Deus ipse commisit."

The critical interpretation of these passages has not been uniform. Some assert that they connote absolute and world-wide sovereignty. Others maintain that no more was claimed than the right of the Spiritual Power to

[1] *Clementine Constitutions*, "Pastoralis," b. 2, t. 11, c. 2.

[2] *Extravagantes*, "Si Fratrum," John XXII, t. 5: "Ne sede vacante aliquid innovetur."

bring about peace, to stop injustice, and exercise spiritual control. But it seems sufficient for our purpose to assert that the Medieval Papacy possessed a form of Sovereignty, bearing in mind that, even to-day, there are different degrees of that power among the States of the Commonwealth of Nations.

Belgium possesses Sovereignty, but she was made a neutral State by the Great Powers.

In 1814, although Norway definitely refused by the voice of her people to be annexed to Sweden, she was compelled to be so, and by the blockade of an English fleet. The plea of justification has not found favour with some modern authorities, such as Phillimore [1] and Martens [2], but, if necessity seemed sufficient reason for such action in the nineteenth century, little criticism can be passed on the assumption of Papal authority in the Middle Ages.

It is true that the Pope offered territory of the heathen to those who would take it; that Boniface VIII bestowed the Island of Sardinia with Corsica upon James II of Aragon. But one has to remember that by the Convention of 1850 between Great Britain and Denmark, all the possessions of the Danish Crown on the Gold Coast or coast of Guinea in Africa, were ceded to Britain for ten thousand pounds. Seventeen years later, Russian territory with its people in North America, was sold to the United States for 7,200,000 dollars!

Furthermore, it should be remembered that in the

[1] *Commentary*, vol. i, p. 372.

[2] *Des Traités non obligatoires*, vol. ii, c. 2, s. 53, quoted by Phillimore.

Middle Ages, it was not National Sovereignty that States aimed at, but rather Universal Sovereignty. Whilst the Bishop of Rome claimed the right—the spiritual right—to be Universal Head of Christendom, and of heathen States as well, the Emperors of Germany claimed to be the descendants of the Caesars of the Roman Empire through Charlemagne, as distinguished from the Greek Emperors and therefore Universal Sovereign and Chief of the Christian world. But in the end, it is true to say, the Spiritual Sovereignty won. At the end of the thirteenth century, the glory of the German Imperial crown had faded away. On its ruins had risen the Sovereignty of the Christian Church. At the close of the thirteenth century this Ecclesiastical Power was at its height. It had carried to the extreme limit the logical conclusions of the Canon Law. But this authority was not to proceed unquestioned or unchecked. However, before considering the forces which were to be pitted against it, it will be well to dismiss the question of the forged decretals of Isidore. The question does not really affect this subject because the genuineness of the Pseudo-Isidorian Decretals, upon which much of the Pope's authority was based, was never questioned during the Middle Ages. Its influence therefore was as such. It was universally accepted. It was incorporated by Gratian into his *Decretum* and so gained entrance into the Corpus Juris Canonici.

At the end of our period doubts were expressed by Nicholas of Cusa and others. Then the Magdeburg Centuriators demonstrated the forgery in detail. Since then, these criticisms have been almost universally accepted even by the Roman Church, although possibly different

explanations will be given. It therefore does not affect our subject. It was from other channels that opposition came.

The Reformation was as yet a good way off, but there was a growing "Nationalism" among the States, and time came when the hierocratic system could not exclusively prevail, as in the days of the Gregories and the Innocents, neither was the Church of Rome willing to be absorbed by the secular power, as simply a part of the State.

The age of Pragmatics, of Pragmatic Sanctions, and of Concordats had begun. It has been said [1] that the International relations of Rome with other nations cannot be understood without an examination of these instruments. A "Pragmatic" has been defined by Phillimore as "an Imperial Constitution framed after inquiry and deliberation upon a matter of State importance, with the consent of the Chiefs and the approbation of the sovereign of the country." The earliest one of international importance with regard to Sovereignty, is that of St. Louis of France in 1268.

This is a national declaration from a French king—who was admittedly a good Churchman—with a National Church with rights and privileges which, it was asserted, had been previously injured, and which were, in the future, to be protected against the invasion of the Curia Romana. It contains seven clauses which, summarized, assert the following:

National independence in regard to ecclesiastical patronage, control of cathedrals, simony, Church Law:

[1] *Vide* Phillimore, vol. ii, s. cccxxii–cccxxxi.

the principle of Church Law was to be, that ancient councils were superior to Papal jurisdiction. There were to be no extortionate dues paid to Rome.

These articles have been called the Magna Charta of the liberties of the Gallican Church.

The next national declaration of importance regarding this subject was made after the close of the great schism of the Western Church, and after the Councils of Constance and Basle had endeavoured to heal the breach in a divided Papacy. The assembly at Bourges under Charles VII unanimously accepted, with certain modifications, the decrees of the Council of Basle, which, it will be remembered, were a very severe curtailment of Papal Sovereignty. It asserted the superiority of Church Councils over the Papacy. The resolutions of this National Assembly were duly registered by the State in Parliament and became part of the law of the land, not, however, without strong protest from Pope Eugenius, and later by Pius II. After Charles's death Louis XI annulled the Pragmatic Sanction which for twenty-three years had given a large measure of independence to the Gallican Church; but Parliament was immovable on the point, and refused to accept its withdrawal.

The University of Paris protested to the Papal legate against any invasion of the Pragmatic and affirmed that it would appeal to a future Council if necessary. Louis was bent on making peace with the Pope, and in 1472 made a treaty with Sixtus IV, which reduced the Pragmatic as to beneficiary matters, to the same position as the German Concordata: but Parliament refused to register the treaty. Later Pope Julius II put France under an

interdict and excommunicated the King. Louis XII replied by ordering that the Pragmatic should be observed throughout France, and convened his clergy at Tours in 1510, before whom he laid his dispute with the Pope, and asked their advice on eight points. The French clergy agreed that:

> the King had full power to protect his subjects from all oppression; that
>
> he might deprive the Pope of fortified places which were used as a means of annoyance to his neighbours; that
>
> he might refuse obedience to the Pope if necessary for his own safety and during this interval, the ancient discipline of the Church should be observed; that
>
> what he did for himself, he might do on behalf of his allies; that
>
> the excommunication concerning temporal matters was, being without legal form, altogether void.

The chief of the clergy requested that these resolutions might be placed before the Pope himself, with a plea that he would put an end to this sad warfare and convene a General Council. They further advised that, in the event of the Pope's refusal, the King should join with the Emperor and those ecclesiastical dignitaries who stood aloof from Rome, in calling together a General Council, and that the precedents of Pisa, Basle, and Constantinople should be adopted.

Pecuniary contributions and other communications with Rome were forbidden until the Pope's decision

should be known. Another assembly was to be held at Lyons, at which Maximilian had promised that he and his clergy would give hearty support. We cannot trace this struggle further except to remark that in 1516 a peremptory citation was issued by Pope Leo X against the Crown, the Church, and Parliament, also against the Universities of France to show cause why the Pragmatic should not be abolished. The Papacy was victorious. The Pragmatic was withdrawn, but only after much protest and in the hope that appeal might be made to a "better-advised Pope and a future General Council".

"Ad Papam melius consultum et futurum Concilium Generale legitime congregandum et ad illum vel illos ad quem seu quos petendo Apostolos instantissime."

The struggle did not end there, but it is sufficient for this period and our purpose.

We now turn to the German Empire. The earliest Concordat between Rome and Germany was in 1122, between Calixtus II and Henry V. It is known as the "Concordatum Calixtinum", and was an arrangement concerning investitures; but the Concordata of the fifteenth century aimed direct blows at Papal Sovereignty, being founded upon the decrees of the Council at Basle, and formally accepted by a decree of the Empire at Mayence in 1439; and the Electoral Princes gained from Pope Eugenius IV a ratification of it. But it was not to last for long. Nine years later Frederic III entered into another treaty with the Pope at Vienna, whereby a large part of the Papal claims was restored. Later, it appears from a reply of Cardinal Aeneas Sylvius—afterwards

Pope Pius II—to the *murmur gravaminis Germanicae Nationis* in 1457, that it was only on account of the troubles and difficulties of the times that the previous Concordata had been entered into by the Pontiff, in the form of a compromise, as the Bishop of Rome could not admit the principle of an absolute sovereign like himself entering into any treaty with subjects. Although the entire Empire successfully resisted a tithe which the Pope sought to impose in 1487, and again reduced it in 1500, yet the Papal supremacy rose to even greater heights than that which was exercised by Boniface at the beginning of the fourteenth century. The Council held at Rome 1512–17, largely destroyed the decisions of the Councils of Basle and Constance. But the tide was to turn yet again, and although the influence of Luther and the Reformation are outside of our period, yet they must not be forgotten.

Pope Paul IV in 1559 issued his Bull "Cum ex Apostolatus Officio" in which by virtue of his *plenitudo potestatis super gentes et regna* he declares that all apostates, whether clerical or lay, princes or subjects, shall be deprived of all dignities and rights, and gave every Catholic full powers to levy execution on their possessions. Heretic princes are *eo ipso regnis et imperio penitus et in totum perpetuo privati et ad illa de cetero inhabiles et incapaces.*

The Council of Trent (1545–63) had an important international influence, but its votes were rather more Italian than truly international, the decisions having been obtained by individual votes, and not by those of suffrages of nations. The growing Protestant demands and the appeal of Charles V had compelled Pope Paul III to convene this Council. But we have passed out of the

Middle Ages. These decrees were not formally, though they have been practically, accepted by France. They were never accepted by the Catholic and Episcopalian Churches of Greece, Russia, Egypt, England, Ireland, and Scotland, and by the Protestant Churches of Germany and the North, and by the civic governments of these countries. The religious wars of the sixteenth century cannot here be discussed, except to mention the fact which is not without significance, that the Peace of Westphalia was signed without the intervention or ratification of the Pope, but not without his protest against the secularization of ecclesiastical property.

The Sovereignty of the Papacy was not to be in the future all that it had been in the past; but even in the Italian Statute of Papal Guarantees "Royal and Sovereign honours" were expressly reserved for the Pope. Yet once again the Papacy returns to "Temporal Power" (1929).

It is not the purpose of these investigations to justify all that the Medieval Papacy claimed, but before condemnation is passed it should be remembered that we are dealing with a period which was essentially brutal, when the only unity among nations was their religion, when the only international organization was the Church, and the only arbiter was the Pope or the devastation and brutality of war.

Gibbon tells us [1] that during the thirty-two years of Justinian's reign six millions were slaughtered: but the details are more appalling than the numbers. On one occasion—after the defeat by Oelius—the Thuringians

[1] *Decline and Fall*, c. xxxiv.

put two hundred maidens to death by tearing them asunder by wild horses or crushing their limbs under rolling wagons. The Saxon Chronicles tell us that Normans were considered by the monks to be devils rather than men, they were so brutal. The only place of safety for a woman was the cloister. Matilda of Scotland, although a foreigner and a neutral princess in England at that time, had to seek the cloister for chastity, as she explained regarding her marriage to the youngest son of William I.

The Normans, to discover a place of hidden treasure, suspended men by their heads, feet, and thumbs, over fires; crushed their brains with tight ligatures; threw them into dungeons swarming with serpents. In the twelfth century in Italy prisoners were buried alive.

When it is remembered that these circumstances formed the background of the Medieval picture, it will not be a matter of surprise or even regret that an ecclesiastical authority had often to make exacting demands upon her followers, although it may often be regretted that better methods were not utilized.

Ecclesiastical Sovereignty in the Middle Ages was, on the whole, a great incentive to international peace; and the so-called arrogance of the Papacy was nothing short of a great ideal.

That "the successful Medieval Pope was a creature of sterile and petrified humanity, with expediency as his only guide and the aggrandisement of Papal power his single purpose",[1] is a judgment transparently false, lacking in the first principles of historical criticism.

On the other hand, it is interesting to notice that

[1] L. Allshorn, *Life and Times of Frederick II*, p. 49.

De Maistre, the theologian, quoting Voltaire the infidel, says that the Pope's authority, at the time of its promulgation and exercise, was eminently beneficial to the world, that the submission of quarrels to the Chief Minister of the Gospel of Peace was one which gave Christendom cause for regret in later times, in the bloody wars.[1]

The Times of October 1853,[2] said:

"When we find a Sovereign Pontiff judging, condemning, and deposing a secular prince, releasing his subjects from their obligation to obey him, and authorizing them to choose another king, we may regret the necessity for such extreme measures on the part of the Pontiff, but we see in them only the bold and decided exercise of legitimate authority of the Spiritual Power over the Temporal. . . . It is not the sainted Hildebrand, nor the much-wronged Boniface, that we feel deserves our apology or our indignation, but Henry of Germany and Philip the Fair of France."

This subject will be dealt with also under "The League of Nations—a Comparison", but, before turning to other subjects, mention must be made of two international institutions, both of which were the offsprings of the Christian Church, which in their turn were to threaten this Papal power. They were:

1. The Oecumenical Councils.
2. The Universities.

Both of these will be dealt with subsequently, under their respective chapters.

[1] Phillimore, vol. ii, p. 393.
[2] Quoted by Phillimore.

COMPETITORS FOR SOVEREIGNTY

I.—International Assemblies

In tracing the source of modern international assemblies, mention must be made of the Greek Amphictyonic Council, but it is quite certain that it had no influence upon our subject. It has given no traceable contribution to modern international law or peace; and as this subject is discussed under "Arbitration", we can pass over it now and claim that the Christian Church afforded the earliest instances of International Assemblies.[1]

In the ancient world, dominion and not discussion was the prevailing custom, and the reason for this is not difficult to seek. There was far too much suspicion and lack of cohesion to make diplomacy even possible. It was only with the advent of a religion which claimed the whole world for its sphere, and demanded mutual goodwill, that such became a working possibility. In the Councils of the Christian Church, we find for the first time, discussion in an assembly composed of representatives, not only of different States, but of all civilized nations, together with those whose work gave them a right to represent some of the uncivilized parts of the earth. They were, indeed, a Medieval League of Nations.

The first Church Council dates from A.D. 49 at Jerusalem.[2] Its decrees were to affect Christians, wherever they might be found. From that time assemblies went on growing in importance and sphere of operation.

[1] Phillimore seems to favour the view that the Amphictyonic Council was an Inter-state league, but also says that "the Christian Church probably afforded the earliest instances of representative assemblies" (vol. ii, p. 196).

[2] Acts xv. 6.

Cyprian maintained that the "Unity of the Church" made it necessary for the bishops of different areas to meet together for discussion of different problems, and during the ten years that he was Bishop of Carthage he called a number of such councils together.

It is true that only Oecumenical Councils were, strictly speaking, "international", but in so far as both National and Provincial Councils decreed laws, which helped to form the body of general Church law and custom, they also had their influence. The word "oecumenical" is interesting. It is derived from the Greek word *οἰκουμένη*, meaning "the inhabited world". Moreover, it was an assertion not far from fulfilment. The first as such, was the Assembly held at Nicea in A.D. 325, although before this there had been Councils at which bishops from different countries had met together. The bishops of London and York, long before Augustine visited our shores, had been present at the Council of Arles, A.D. 314, but the Council of Nicea can claim to be the first truly international assembly in history. It is not our purpose to discuss the problem which called forth this Council, but rather to emphasize the representative character of those who formed that gathering.

All the bishops of Christendom were summoned; thus an important person—an ecclesiastical ambassador—came from every Christian State. But not only so, for the bishops of the Goths beyond the Danube, of the Crimean Bosphorus, John the Persian, and Restaces the Armenian, representatives from the Holy Land, Macedonia, Asia, Pontus, Dacia, and Africa were also present. Britain was not actually represented, but was certainly

part of the "International Church". The number of bishops present has been variously stated; no list is extant with more than two hundred and twenty-one names, but this is probably incomplete. The actual number is estimated to be nearer three hundred.

Eusebius speaks of this majestic roll of "Churches far and near, from the extremities of Europe to the farthest ends of Asia".

These Councils were acknowledged by the Greek Church up to and including the Council of Constantinople, A.D. 869.

Justinian decreed that the canons of the first four Councils should be observed as laws.[1]

Much that has been said on the subject of arbitration will also be applicable to Councils, but it will be well to glance at their constitution and at the part they played in regard to the Papacy. Their canons were not decreed for one particular Church or country, but were, more or less, applicable to all Christian States. This is seen in the Council of Benevento, A.D. 1087, where lay investiture was condemned and "any Emperor, king, duke, prince, count, etc., so giving any preferment should be excommunicated".

At the Council of Rheims, A.D. 1119, in addition to the Pope, there were present thirteen archbishops and more than two hundred bishops convoked from all the provinces of the West, Louis VI of France being also present. Complaint was made at the Council against England's violent seizure of Normandy.

To the Council of Lyons in 1245 Innocent invited

[1] *Novellae*, cxxxi. 1.

all Christian princes, and at the same time cited the Emperor Frederic to appear before the Tribunal. Among the representatives there were present one hundred and forty bishops, including those from Constantinople, Antioch, and Aquileia, being the Latin Patriarchs: Baldwin, Emperor of Constantinople, and Raymond, Count of Toulouse. England was represented by its ambassadors, who lodged their complaint that

> "King John had, contrary to custom, made a donation to the Pope, consisting of Ireland, and protested against the Papal representatives making exactions whilst in England."

Frederic's ambassador appealed against that Emperor's deposition and declared that he would appeal to an Oecumenical Council. Later the Pope declared this Council to be such, but this status is not universally accepted. In the third session the Pope ordered that succour should be provided for the Empire of Constantinople and that a part of the revenues of the benefices should be appropriated for that purpose.

We now come to one of the most important international assemblies ever convened. It is the Council of Constance.

In its thirty-ninth session the international status of these Councils is hinted at, for it was decreed that a Council shall be assembled at least every ten years, but in the case of war or pestilence the Pope with the Cardinals shall decide the place of meeting, and hasten, not retard, the time of the assembling. In the forty-first session, regarding the election of the Pope, six prelates are to be chosen, of different nations.

The officers of this Council are significant. Amongst

others there were to be four scrutators, one auditor of which was to be the Auditor of the Rota, i.e. one of the chief tribunals of Rome, composed of twelve prelates, eight of whom were Italians, two Spaniards, one a German, and the other French. These last four were nominated by their respective Sovereigns.

So great was the influx of persons that it was reckoned that not less than thirty thousand horses were brought to Constance. This Council lasted four years.

It is on record that the previous Council which was held at Pisa some five years before to discuss the same subject, the great schism, besides bishops and cardinals—Jerusalem and Antioch being represented—deputies were present from the Universities and the following countries: England, France, Portugal, Bohemia, Sicily, Poland, Cyprus, Burgundy, Brabant, etc.

Just as history records the struggle between the divine right of kings and that of democracies, so at the close of the Middle Ages these Councils, the representatives of nations and peoples, pitted their authority against that of the Sovereign Pontiff. Their great opportunity came with the Papal Schism. Towards the end of the fourteenth century Christendom was divided between two Popes contemporaneously chosen at Avignon and at Rome: indeed, at one time a third was chosen at Pisa (1409). The story is a sad but well-known one. The schism lasted from 1378 to 1417. A number of Councils were held at which an attempt was made to find a solution. Three were held at Paris, in which the Universities took no small part. Another was held at Basle, but perhaps Constance, for our purpose, is the most outstanding.

The words of so great an authority as Sir R. Lodge are worth quoting.

"The Council of Constance is one of the most notable assemblies in the history of the world. . . . It is like the meeting of two worlds, the old and the new, the medieval and the modern. At Constance all the ideas, religious and political of the Middle Ages, seem to be put upon their trial. It must not be forgotten that there were great secular as well as ecclesiastical interests involved in the Council. Princes and nobles were present, as well as Cardinals and Prelates. The Council may be regarded not only as an Assembly of the Church, but as a great diet of the Medieval Empire."[1]

At this Council Popes were commanded to appear as defendants before a tribunal. For disobedience they were deposed. But as early as the Council of Tours, in 1239, thirteen canons were passed with "the approbation of the holy Council", thus showing that the approval was not confined to the Pope or his legates.

The Bull "Exsurge Domine" in 1520 was issued against Luther for appealing to the Councils of the Church.

Five years later the Emperor Charles V answered the Papal Bull "Non opus esse credimus", by appealing to a General Council, for the Pope, as he asserted, had ceased to be a shepherd, and had become an invader—*non pastor sed invasor*. By the year 1528 the Council of Paris had definitely decreed in Canon 3 that "the Church is represented by an Oecumenical Council, which has universal authority in determining questions of faith, etc."

Here let us leave the question, but yet once again to claim that

[1] *Close of the Middle Ages*, p. 211.

"These Oecumenical or General Councils had in course of time become a tribunal before which were discussed the principal international affairs of Christendom, and not only articles of faith and matters of religion, but the conduct of princes, their trial and punishment, the precedency and rank of nations, and the disputed successions to kingdoms."[1]

International and representative assemblies were the product of the Early Church, and were developed into a formal system in the Middle Ages.

They have been called by Voltaire the Senate of Europe.[2]

II.—The Medieval Universities

It is admittedly difficult to estimate the exact value of the direct contribution of learning to any department of reform, and that which concerns world order and peace is no exception to the rule.

The Great War has proved that science is like the knife. In the hands of the surgeon it may save life, but in the hands of an assassin it will destroy it: hence the supreme importance of the moral or spiritual factor.

Those educational enthusiasts who dream of a universal peace, ushered in by the mere diffusion of knowledge, are

[1] Phillimore, vol. ii, p. 380.

[2] *Essai sur les Mœurs et l'Esprit des Nations*, c. 67:—

"We see that Europe, then professing the Catholic religion, was an immense republic . . . whose disunited members consisted of kingdoms, provinces, and free cities. There was no sort of public affair in which the Pope and the Emperor did not concern themselves: so that the several parts of Christendom corresponded with each other in the midst of discord. In fine, the State of Europe exactly resembled that of Ancient Greece, excepting the difference of extent and politeness." (Nugent's translation.) *Vide* also Phillimore, vol. ii, p. 380.

surely doomed to disappointment. Knowledge can make the unscrupulous more cunning, as well as enlighten the intellectually backward.

Nevertheless, it cannot be seriously doubted that the Medieval Universities created the machinery and the atmosphere for order and peace. They helped to open up an avenue through which these reforms might proceed.

Before discussing that part which these corporate and international bodies were destined to fulfil, it may be well to glance at their origin, and at the connection which existed between them and the Church.

Origin.—Universities, as corporate bodies, "did not exist in the most highly cultivated societies of the ancient world".[1] The teachers of Athens and Alexandria were not corporate bodies, but in the Middle Ages they were essentially such. They were as much corporate and international as the Church from which they took their beginning.

Christ's commission to His Church was threefold.[2] His disciples were bidden to heal the sick, to teach, and to preach the gospel, and in obedience to His command the Christian Church has always been the pioneer of education. Before the rise of these Universities, the Cathedrals formed the only educational centres, but as time went on and the numbers attending these Church Schools increased, the need of a larger organization made itself felt, and from the time of Charles the Great till the eleventh century, education was entirely in the hands of the monks. This period has been called the "Benedictine

[1] Rashdall, *Universities in the Middle Ages*, vol. ii, p. 710.
[2] St. Matt. xxviii. 18 St. Mark xvi. 15.

Age". But the time came when both Church and pupils felt the growing need of a wider sphere. The Cathedral Schools went on growing in number and importance until they reached the status of the Medieval "Studium Generale"—a term not easily defined in a few words. When, however, the monasteries had given birth to the Universities, they shut their own doors upon secular learning.

It is claimed that this gift of the Church was one of the most powerful civilizing agencies in Europe. Although the University now became a separate body from the Church, it must not be assumed that the ecclesiastical authority ceased. History proves it to be very much otherwise. During the Middle Ages, the Popes, in theory at least, never surrendered their right to control these new seats of learning. During the thirteenth century, when they increased so much in numbers, cities applied to the Pontiff for power to found these Universities, and although it would appear that some instances show that they possessed a royal foundation, yet it was the custom to apply to the Bishop of Rome for his sanction even in these cases. That the ecclesiastical power was dominant, is seen in the fact that although the University of Vienna was founded by Duke Rudolph IV with political aims, yet the consent of Pope Urban V was obtained first.

As early as 1229 Pope Gregory IX founded the "Studium Generale" at Toulouse, and some fifteen years later Innocent IV established one in the Pontifical Court itself.

The three Medieval Universities of Scotland were founded by bishops.

Next in importance to the foundation of the University comes the "licence" to teach, and this was claimed as the absolute prerogative of the Church. To such teachers as had received this ecclesiastical authority was given an international status, for their licence was the *jus ubique docendi*, and as such was recognized at every University. Thus it came to pass that these local schools had grown into oecumenical or international institutions, but were still largely under the control of the Church.

As early as 1218 we find Pope Honorius III conferring degrees in virtue of his office, a custom which has lasted to this present day. In England, after the Reformation, the right was exercised by the Archbishop of Canterbury, and still remains in force.

Furthermore, it cannot be doubted that the Papacy exercised that power of control which is the right of a final court of appeal. Pope Gregory IX peremptorily requested even the King and the Queen Mother to punish the Provost and his men for a dispute in the Bourg of St. Marcel. By a Bull dated 1231, the monarch was commanded to enforce certain privileges. A glance at the history of these Universities will reveal this ecclesiastical influence.

Bologna, the great Law University, stands first in importance. In many respects the work of this school represents the most brilliant achievement of the intellect of Medieval Europe.[1] Documentary evidence of its origin is rather scanty, but this much is certain that a body of statutes received Papal approval in 1253. Some earlier statutes were apparently drafted by the celebrated canonist

[1] Rashdall, vol. i, p. 254.

Johannes Andreae and officially published in 1317. As to the jurisdiction of the university, it was largely in the hands of the rector, but the Canon Law made it necessary for this office to be filled by a clerk in Holy Orders, and so the requirements of the statute ran, "a secular clerk, unmarried, wearing the clerical habit, of five years' standing in the study of law".[1] In 1742 this office passed to the Cardinal Legate of Bologna.

Next in importance comes Paris. In almost every case, prior to A.D. 1500, the foundation of these Parisian Colleges was due to an ecclesiastic. During the earlier years the Pope had almost absolute control. He disposed of disputes with little reference to the royal right. In the fourteenth and fifteenth centuries the University was, on different occasions, "reformed", and in each instance by a Cardinal of the Church.

Oxford University appears to have been less ecclesiastical than the Universities of France, but as soon as its constitution becomes known to us, we find that its chief officer—the Chancellor—derives his authority from the Bishop of Lincoln. In a Bull issued by Pope Innocent IV, it is laid down quite definitely that no one is to be allowed to teach in this University who has not first of all been examined and approved by the bishop or his representative, "according to the custom of Paris", and much the same thing applies to Cambridge. It was not until 1374 that the Chancellor even began to protest against taking the oath of canonical obedience, and then without success, for after much conflict and an appeal to the Court of Arches, he was compelled to take it. The

[1] Rashdall, vol. i, p. 183.

story is much the same in regard to the University of Cracow, founded by Casimir the Great, King of Poland in 1364, which, by its constitution, endeavoured to safeguard the privileges of the royal Chancellor, but without success, for Pope Urban VI claimed and obtained these rights for the bishop of the diocese.

During the fourteenth and fifteenth centuries there was a tendency for the Universities to come more under State control, but not without opposition from the Church.

But apart from that direct control by the Papacy, there was that indirect, but no less powerful influence, exercised by the Church by means of the authority of the Canon Law.

The Canon Law.—The faculty of Canon Law was one which every University in Europe possessed. In the Middle Ages this subject was probably first in importance over all others; and, in practice at least, not excluding that of theology. Its importance was due in some measure to the fact that it brought its doctors good remuneration; but apart from this consideration it occupied a unique position.

It was the only international science of its age. For a time it was the only Law faculty in these Universities. The *Decretum*, appearing at the right time, took the world by storm, and Papal absolutism received a strong impulse from it. It is said that Gratian played as large a part in the development of the University system as the revival of Civil Law did. "In fact he was destined to wield a more powerful influence over the course of international affairs".[1] By the twelfth century Canon Law was being

[1] Rashdall, vol. i, pp. 128–9.

taught at Oxford by Thomas de Marleberge, afterwards Abbot of Evesham.

In the year 1219 Pope Honorius III issued a Bull, "Super speculam", by which the teaching of the Civil Law at Paris University was forbidden, and some eighty years later, when a further codification of the canons had taken place under the name of "Liber Sextus", Boniface VIII ordered it to be presented to the Universities of Paris and Bologna.

In a Bull of Pope Innocent IV, dated 1254, under the title "Dolentes", it was enacted that in France, England, Scotland, Wales, and Hungary—in fact almost everywhere, except Italy and Germany—the Imperial laws were not to be read in the Universities, "unless the kings of those countries would have it otherwise".[1]

It was not until 1679, when Louis XIV authorized the teaching of the Civil Law, that the title of the Faculty of Law at Paris was changed from "Faculty of Decretals" to "Faculty of Law".

At Cambridge, Trinity Hall was founded in 1350 specially for legal studies. There were to be twenty scholars, ten of whom were to study Canon Law, and were to take Priest's Orders.

"The College of Spain", founded by the will of a Spanish cardinal, Egidio Albornoz, in 1367, has a special interest in so far as it served for the pattern of many others in Italy and Spain, and approaches nearest to the type of English Universities. Its statutes were revised by Papal legates in 1377 and it was decreed that there should

[1] Rashdall, vol. i, p. 323, and for a discussion of the Church's attitude towards the Civil Law, *vide* vol. ii, p. 740, Appendix XI.

be thirty scholars: eight in Theology, eighteen in Canon Law, and four in Medicine.[1]

Many other instances might be brought forward to prove that this ecclesiastical and international law occupied one of the chief places in the studies of the Medieval Universities.

Character.—Next to the Gospel we would place "learning" as that influence on human affairs which refuses to be national, but by its very nature must be international. Therefore it is not surprising to find that in these Universities this international spirit was very definitely revealed. Like the Church, they were to be found in practically every civilized State as the centre of thought and progress, before the close of the Middle Ages. They played an important part in France, England, Scotland, Sweden, Denmark, Poland, Hungary, and Germany, but their international character is evidenced by the nationalities of the students of each individual University, different "nations" being represented in each individual academy. In Paris, for instance, there were four "nations"—French, Normans, Picards, and English. The Sorbonne was so cosmopolitan that it stood in the way of French politics, and official action was taken to alter the constitution, but the French King protected foreign clerks, even when he was at war with their country. These scholars have been termed "citizens of the world".[2] Although almost all of the famous schoolmen from the time of Abelard onwards taught at Paris at one time or another, yet scarcely one of them was a French-

[1] Rashdall, vol. i, p. 200.

[2] *Ibid.*, vol. i, p. 518, quoting *Chartular. Univ. Paris*, edited by Denifle and Chatelain, vol. ii, nos. 718–20.

man by birth. Even the little University of Vercelli in Italy attracted a Spanish dignitary to study law there in the thirteenth century.

Oxford University voted by "nations" just as the students did at Paris. In the former there were four nations—Scotch, Welsh, Irish, and English—until 1369, when Edward III expelled all foreign scholars. This was a change of policy from that of his ancestor Henry III, who in 1229 had offered an asylum to the dispersed scholars of Paris.

The same system was operating in the University of Vienna, where the following nationalities were represented: Austrian, including Italy; Rhenish, including Western Germany and all Western Europe; Hungarian, including the Slavonic nationalities; Saxon, covering those parts of North and Eastern Germany, the Scandinavian kingdoms, and the British Isles.

The Scotch student of the Middle Ages, "like the Scotch soldier of fortune, was to be found everywhere".[1] A Scots' College was founded in Paris by the Bishop of Moray in 1326; and they also had a "nation" to themselves at Padua, where, however, they were but one of ten nations which were represented and voted there.

At Orleans there were ten nations—France, Germany, Lorraine, Burgundy, Champagne, Picardy, Normandy, Touraine, Aquitaine, and Scotland. The University attached to the Papal Court was, like the ancient Law Courts, migratory. It followed the Pope into whatever country he might travel.[2]

[1] Rashdall, vol. ii, p. 295.
[2] *Encyclopaedia Britannica*, 9th edit., vol. xxiii, p. 834.

Perhaps nothing illustrates more strikingly this international element in these schools than the fact that although Germany possessed no University of her own till the middle of the fourteenth century, yet she was far from untouched by intellectual movements. Her students abounded at the Universities of other countries.

It is thought that a University once existed at Seville for the study of Latin and Arabic. The way had been opened up for it by the missionary labours of the Dominicans, who from the middle of the thirteenth century had set apart certain of their members to study Arabic so as to fit themselves for work among the Saracens. Later there were schools for this purpose at Tunis and Murcia. At the Council of Vienne in 1311 it was decreed that there should be "Oriental Chairs" in the great Universities, thus bringing the East into touch with the West.

The "lecture system" of this period casts a light on the remarkable way in which students were bound together. The Papal "licence" gave teachers a quasi-international status, as already mentioned, and the students themselves did not pursue their whole course at one University, but at different seats of learning. The problem of different languages was solved by using Latin, the international language of the Church. It has been said that before the invention of printing, lectures were spread abroad from one country to another, more freely than after, because in that earlier period they were so scarce that they were carried about in the student's travelling-bag, and there was no need to wait for a translation, as is so often the case to-day. "In this way it came about that in the Middle Ages ideas, systems, and movements spread more easily

from Paris to Oxford, or from Oxford to Prague, than they spread at the present time".[1] This broadening of national ties and influence must have contributed largely towards comparative good-will and peace.

It was not only in their constitution, but also in their authority and influence that these Universities were demonstrating their international characteristics.

Authority.—The Cathedral School had grown into a cosmopolitan University. Its growing authority was not regarded without some suspicion, both from the Church and the State. The nobles were particularly against the movement, especially in Germany, where they succeeded in keeping the University movement out of the country long after such schools were established in other States. Nevertheless, they were destined to possess an authority and influence which would in turn be pitted against both Church and State.

If inter-State relations were to be governed by anything beyond brute force, it was essential that they should be in the hands of men of learning, and monarchs and nobles could lay little claim to that qualification, as a class, in the Middle Ages. The great reformers and lawyers, as well as the great ecclesiastics (at this period, all three rôles were often found in the one person), were provided by the Universities.

The establishment of the Sorbonne, *c.* 1257, is said to have been "of European importance".[2]

St. Louis, in granting his diploma to the Carthusians, speaks of Paris University as the place where "flow the

[1] Rashdall, vol. ii, p. 231. It should be noted, however, that this was written in 1895.

[2] *Ibid.*, vol. i, p. 489.

most abundant waters of wholesome doctrine so that they become a great river . . . which irrigates the whole Church".

They became in some degree "the expositors of International Ecclesiastical Law, and the arbitrators between Church and State";[1] and the Papal Schism afforded them their great opportunity in this respect.

A large and lucrative part of the business of the great law doctors of Bologna consisted in giving "consultations", not only to private persons, but also to princes and cities on matters of public and constitutional law. "It was through the Civil and Canon Law that this School exercised its most powerful, at least its widest, influence over the course of human affairs."[2]

It is not without significance that the University in Paris, as an organized society, became politically and indeed internationally important under the very palace of a despotic king, in the midst of subjects almost without municipal privileges. This society of educated men was protected from the secular power through the sanctity of Holy Orders. It possessed the right of public meeting, of freedom of debate and speech, and access to the throne. All this contrived to make such a body a great organ of public opinion, and a channel through which that opinion might be expressed.

In all those great assemblies, when from time to time the king gathered his great men around him, such as in the States General, the Universities were fully represented. This new authority was expressed in the title

[1] Phillimore, *Commentary on International Law*, vol. ii, p. 384.
[2] Rashdall, vol. i, p. 260.

"Eldest Daughter of the King", which was first assumed under Charles V.[1]

In 1380 that monarch died, and then the royal power became much curtailed; but the University took advantage of its opportunity, and asserted itself as a factor to be reckoned with in the political life of its age.

In 1465 Louis XI added six Parisian Masters to his own Privy Council; but two years later, having seen their power and influence, forbade the University to meddle in politics, even in their correspondence with their relatives and demanded the revival of an old statute requiring that a royal official should be present at the rectorial elections.[2] But by this time the approbation of the University had come to be regarded as essential to the party in power at any particular crisis.

Before turning to the subject of the "Papal Schism" and the part which the Universities played as arbitrator, it is interesting to notice that, even here in England, these learned bodies were regarded with special respect.

When Henry quarrelled with Becket, the King offered to submit the case to the arbitration of scholars of different provinces, "examining the matter with equal scales"; or, as the Archbishop himself said, to the arbitration of "Parisian Scholars".[3]

In England, at least, the University acted as the censor of literature: this being decreed at the Council of Oxford in 1408, and was directed against the Lollard teaching.

There is evidence to show that, by this time, the value of international status among the Universities of Europe

[1] Rashdall, vol. i, p. 520.
[2] *Ibid.*, vol. i, p. 624.
[3] Stubbs, *History*, vol. i, p. 337, quoted by Rashdall.

was being recognized and sought for, as is revealed by the fact that at the Council of Constance, 1414–18, the Warden of Merton College, Oxford, requested that his University should take precedence over that of Salamanca, and his claim was allowed.

It was perhaps in the ecclesiastical sphere, rather than in the political, that these learned bodies exercised an international authority. Christianity insisted from the first on being world-wide, whereas States had to be confined within narrower limits; although monarchs were not without their dreams of a world-empire.

Pope Innocent III, a Parisian Master, and one of the greatest pontiffs, issued a Bull empowering his own University to elect from their number a proctor to represent them in the Papal Court, thus granting them the position of adviser.

A century later this same body became a judge or arbitrator, for when the Bull "Unam Sanctam" was issued in 1302, and Albert I of Germany had acknowledged that kings and emperors received the *potestas temporalis gladii* from the Apostolic See, and had taken the oath to Boniface VIII, Philip III of France invoked the aid of the University in his struggle with the Pope, and commanded the members of that society to examine the claims of the Pontiff.[1]

By the time of Pope John XXII, the University began to dictate, even in matters of faith, and to the Pontiff himself.[2] Indeed it is said that this body of learned men, in their corporate capacity, was regarded as an emergency

[1] Rashdall, vol. i, p. 302.
[2] *Ibid.*, p. 530, *vide* "Retardation Theory".

council, acting as a "standing committee" of the French Church or even of the whole Catholic Church.[1]

Although the ancient Bull "In Coena Domini" excommunicates and anathematizes all colleges and Universities which appeal from Papal decrees to a future Council, nevertheless, at the beginning of the fourteenth century, these very bodies were taking an important part in the great Church Councils, and towards the end of the century they were chiefly instrumental in dethroning and appointing the chief Pontiff himself. It was the Papal Schism which contributed so largely to the Universities' international authority and influence, in the same way as it had brought power to the Ecclesiastical Councils.

The details of these sad events are well known. The spectacle of rival popes was disastrous to all the highest interests of the Christian world. Secular policies and selfish interests did not help to improve matters, and if the world was to be saved from anarchy, some authority, broader than a mere State, with no national "axe to grind", must intervene. The only body which could lay claim to anything approaching these qualifications, which could act as a court of appeal between the secular and the spiritual powers, was the University.

Benedict XII had suggested this authority some forty years previously, by beginning the custom of notifying officially the Papal election, to the University, which was thus acknowledged one of the great powers of Europe. It has often been described as one of the three great powers or organs of the European system.

[1] Rashdall, vol. i., p. 525.

Paris, with its four nations, the common mother of all northern Universities, the recognized "fountain head of the streams of knowledge", as official rhetoric chose to term it, could really claim something approaching to international status.

These Universities, as we are about to prove, performed in their generation those functions which "to-day are undertaken by the Press, the Platform, and even the Polling Booth".[1]

The catastrophe of rival popes, mutually anathematizing one another, caused a "paper warfare" among the doctors of Paris, but there was evidently a sufficiently strong Urbanist party, as that Pontiff sent his warmest thanks to the University for not having joined the schismatics.

The University resolved to petition the Court not to insist upon a hasty conclusion, although the latter had very definitely taken the side of the Avignon claimant. Furthermore, the University determined that their Rector should not conclude for either side without the unanimous vote of all the faculties and nations. But it must not be assumed that they were entirely free from the royal power. It was an age when the power of law had to be subordinated to the power of might; and in this instance the University, in spite of its learning and prestige, was forced by the Emperor to give a decision contrary to its opinion.

Nevertheless, the idea of forcing a termination of the schism on the reluctant Pope of Avignon, may be said to have originated with the University, or at least to have

[1] Rashdall, vol. i, p. 546.

been kept alive only by that body after the death of Charles V.

The story is an interesting one. John Rousse or Ruysche appeared before the Regent with a resolution of the University in favour of a General Council as the best means of settling the dispute, but only to receive a rebuff. Still, the question was a burning one amongst academic circles, and other attempts were made in 1390 and the following year, but yet again only to be disappointed. In 1392, however, they won a victory and were allowed to discuss the subject openly.

A chest was placed in the Mathurine Convent, into which members were to put their written opinions. The result of these suggestions when classified fell into three groups. The first suggested cession or concerted abdication of both pontiffs. The second urged "arbitration"; and the third maintained that a General Council was the best way out of the difficulty. These were placed before the King with the resolution that if the Pope refused to adopt one of them, he should be held a schismatic. The College of Cardinals agreed to this almost unanimously.

In 1395 the *via cessionis* was definitely adopted as the best method, first by the National Council of the Church and then by the University. Unfortunately, Benedict replied to this peace effort by depriving the University members of their benefices. At this juncture their only redress was to appeal to "the next sole, true, orthodox, and universal Pope". But their efforts did not cease, for we are told that during the twenty years which preceded the memorable Council of Constance,[1] "the history of

[1] For the importance of this Council, *vide* p. 56.

Europe centred round the debates of the Parisian congregations of the University".[1]

The assembling of the Councils of Pisa and Constance, and again, of Basle, was the result of the active diplomacy of the University, together with the ideas formulated by that body.

At the Council of Pisa in 1409 the international authority of the Church and the Universities was clearly demonstrated by the fact that representatives were there from the colleges of Oxford, Cambridge, Paris, Florence, Cracow, Vienna, Prague, and many others. In Session 13 it was one of these representatives who charged Pedro of Luna, the anti-pope, before the Council, with being a heretic and schismatic. This he declared to be the opinion of the French Universities.

At the Council of Constance, some five years later, when John XXIII was urged to abdicate, deputies from the University under the leadership of the great Gerson, their Chancellor, contended that Oecumenical Councils were superior in authority to popes. This doubtless influenced the assembly in their decision of deposition, pronounced against John XXIII, on May 29, 1415.

The international influence of the Universities on these councils is further evidenced by the method of voting which was adopted. This all-important question nearly wrecked the assembly before the real work began. It was one thing to be agreed upon the necessity of a General Council, but the voting was another question, as it would decide the issue. The situation, however, was saved by adopting the method of the Universities and by voting

[1] Rashdall, vol. i, p. 545.

in "nations". Even the anomalies of this system were faithfully reproduced. The German nation at Paris had dwindled down to a single Master, yet he claimed the right to elect himself Proctor and vote on behalf of his nation on the same level as a hundred French Masters.

At Constance the seven representatives of the English nation enjoyed a voting power almost in the same unfair proportion as that of the German in France.

Here we must leave the question of the Papal Schism which for nearly forty years had disturbed the whole of Christendom. That part which fell to the Universities was by no means unimportant. On November 11, 1417, Martin V was chosen to be the sole, true, and lawful Pope, but neither the University nor the State was to claim undisputed and international authority, for no sooner was Martin elected than he set his face against University theological faculties, remembering that these theologians meant councils, and these councils could both appoint and depose popes. Soon after his election, he declared that it was impious to appeal to a council against a Papal decision.[1]

But this did not prevent the University of Paris in 1439 making it quite clear to the Papal legate that they would appeal to a future Council against any invasion of the "Pragmatic". Neither did it stop them from protesting in 1504 against the powers claimed by the legate D'Amboise in regard to benefices, and denying the absolute power of the Pope, when they asserted that *in hac consistit libertas Ecclesiae Gallicanae.*

The rumblings of the Reformation were now not far

[1] Lodge, *Close of the Middle Ages*, p. 220.

distant, but before investigating that subject and the part which the Universities played in it, it will be well to mention the "six articles" put forth by the Sorbonne in 1663, denying all authority of the Pope in temporal matters, direct or indirect, declaring that he had no power to dispense with the obedience of subjects, or that he could depose bishops. They further asserted that the Bishop of Rome was not infallible, and that he was inferior in authority to an Oecumenical Council. Such was the status of the University, in a country which never formally repudiated the Papal dominion, even after the Reformation.

The Reformation in its later stages carries us outside the Middle Ages, yet it may be allowed that the steps which led up to it are within our studies. However, the subject is so complicated that we can only look at a few general principles, and only those which are concerned with the Universities.

In preparing for this great movement "the universities played the part of a European potentate. Their ambassadors travelled to all parts of Europe. At one time they were found as far north as Scotland, with despatches or missions to emperor, pope or king, to princes, prelates or universities, in the hope of establishing a European Concert: and that such a thing was ultimately established was due in very large measure to the peculiar and unique prestige of the university, and the use which that body made of those powers." [1]

In England, Oxford University had become the cradle of the Wycliffe Movement; the reformer having

[1] Rashdall, vol. i, p. 545.

being appointed Master of Balliol in 1361. But this movement did not remain national.

It was a rule in the University of Prague that Bachelors of Arts might not deliver their own lectures, but must expound the teaching of distinguished professors either of Prague, Paris, or Oxford. Many Bohemian students, notably the disciple and pupil of Huss, Jerome of Prague, completed part of their course at Oxford, and returned to their native land, carrying with them Wycliffe's teaching.[1]

Thus arose the Hussite Movement, which was older than the reformer of that name. Oxford had influenced Prague, and now Huss continued step by step the Reform Movement in his own University.

Reform, whilst recognized by the Church, and its outstanding claims for attention, was initiated largely by the Universities, for here alone was that "leisure and learning" for intellectual growth and religious freedom. It must not be forgotten that the mass of the higher clergy were also lawyers and statesmen.

The University of Erfurt became important in the sphere of reforms, just about this time, through the work and teaching of John of Wesel, "one of the most distinguished precursors of the Reformation". But it was made more famous in later years by the great reformer —Martin Luther.

Luther was poor, and could scarcely have enjoyed higher education if he had been compelled to travel to Paris for it. It is doubtful whether he could have played his part—an international one—in the great Reformation, if he had been denied his Erfurt associations.

[1] Lodge, p. 207.

He pitted the authority of the University and the right of private judgment against the sovereignty of Rome.

Calvin was a member of Paris University, but we are wandering outside our period.

In regard to the Reformation in England, it is well known that the Universities took a leading part. They were always less dependent upon Rome than those of other countries. But quite apart from the "religious" reformation, they occupied, in some degree, the seat of arbitrator in the political reformation. It is well to keep the two issues of the Reformation clearly apart.

The question of Papal supremacy in England had long been an embarrassing one, and the divorce question was but the spark which caused the great conflagration.

On the advice of Cranmer, Henry VIII consulted the Universities for their formal opinions regarding the validity of his marriage and divorce, and in a speech before the legates at Bridewell, he declared that he had "applied to the greatest clerks in Christendom for their resolutions". This was in November 1528.

As a matter of fact, it would appear that these resolutions were far from being what Henry had desired.

At Oxford the meeting broke up in confusion. Later a partial decision was obtained in favour of Henry's wishes, by means of excluding the Masters.

The result at Cambridge was much the same. A vote in favour of asserting that the former marriage was unlawful was only obtained after some members had left the assembly and after much disagreement.

On the Continent the general feeling was against Henry's action. So much so, that Dr. Richard Coke, who

had been sent to Padua on this mission, feeling that the Papal influence prejudiced the Universities, suggested that "the divines and canonists might declare their consciences without fear or hazard", and that this should be definitely granted by brief from the Pope.

The University of Orleans and the Faculty of Canon Law at Paris declared that the Pope had no power to dissolve the marriage; and this was also the verdict of the other French Universities.

Luther and Melanchthon were appealed to, doubtless with high hopes, but neither would advise the course which the King desired.[1]

The result of the Reformation, as it affected the course of international law and peace, is one which cannot be lightly regarded or easily estimated. It brought into prominence national interests, as opposed to a universal but ecclesiastical dominion. Upon this principle, modern international law was founded by Hugo Grotius in the seventeenth century.

On the other hand, it must be remembered that the period which followed the Reformation witnessed wars of most infamous cruelty, lust, destruction, and chaos.[2] But we are passing beyond the limits of our period.

The Universities, then, provided the Reformers, the Lawyers, the Ecclesiastics, and the Statesmen. They provided the machinery and the opportunity for international intercourse, and although they were essentially the offspring of the Catholic Church, they obtained a status and influence which were pitted against that of the Pope.

[1] *Vide* Collier's *Ecclesiastical History of Great Britain*, vol. iv, pp. 147 ff. [2] *Vide* Lawrence, *Principles of International Law*, p. 28.

ARBITRATION AND INTERVENTION

THE advance in the cause of humanity and peace by the introduction of arbitration cannot be over-estimated. It is the triumph of reason over force. Phillimore says:

"It seems to me that within the whole range of International Jurisprudence, there is no subject of more paramount importance than the character, constitution, and mode of procedure of the Appellate Tribunal."

The question then arises, where and when did men first appeal to some neutral and international power to settle their disputes by the light of reason, rather than resort to the "dread arbitrament of war"?

With one questionable exception, arbitration did not exist as an international system in the ancient world. That possible exception is the Council of the Amphictyonic League of Ancient Greece. How far this Council really acted as an arbitrator in political matters amongst Greek States is a matter upon which opinions are not unanimous, but it would seem that the greater weight of authority is against the theory. M. N. Tod has investigated the matter very carefully and given to the world his book entitled *International Arbitration among the Greeks*, and has shown that these States did appeal to a religious authority for such matters as disputes over frontier boundaries, springs and streams, and debts of money.[1] Phillimore calls it the "tribunal of public international law of the different States of Greece", but admits that it was very imperfect.[2]

[1] Chapter 2.

[2] *Commentary*, vol. i, p. 17.

On the other hand, an unqualified denial has been given by Hosack in the following words:

"It has been assumed at times that the Amphictyonic Council was invested with the power of settling disputes between States of Ancient Greece, but we have no proof that any such authority was ever practically recognized and enforced. It did not, so far as we know, interfere for the purpose of preventing or stopping the Peloponnesian War.

"Had it done so, we should certainly have known the fact from Thucydides. But the Amphictyonic Council is not once mentioned either by that historian, or by his contemporary, Xenophon. The absolute silence of these authorities appears to furnish conclusive proof that it exercised no political authority in their day." [1]

Another writer says that it was essentially a religious confraternity, having no political unity. He asserts that Cicero's epithet *Commune Graeciae Concilium* was not in substance wholly true and that

"we should completely misinterpret Grecian history, if we regarded it as a federal Council habitually directing or being habitually obeyed".

"Its special function, as far as we know it, consisted in watching over the safety, the interests, and treasures of the Delphian temple." [2]

Dr. Walker, in writing on this subject, says that "the international law of such a people could, it is clear, be hardly more than an inter-municipal law", and then proceeds by asserting that it was religious rather than political and that the history of the Council shows that it was almost powerless for good, "except perhaps as a passive instrument and that it was only active for purposes which were either unimportant or pernicious. In the

[1] *Rise and Growth of the Law of Nations*, p. 10.
[2] Grote, *History of Greece*, vol. iii, p. 34 f.

great national struggles it lent no strength to the common cause."[1] Nevertheless, it probably did contribute to the cause of unity and friendliness, especially as it only operated among a people who had the common bonds of race, language, custom, and religion. But there was not a single League for all Greece.[2]

That there was, at any time in Ancient Greece, a recognized system of international arbitration, seems more than doubtful, but, in any case, it could not have had any real influence upon our modern system which grew up among the Christian nations of Europe.

It cannot be shown that arbitration was part of Rome's policy of pacification, but rather *debellare superbos*. The great empire did not possess the qualities which are necessary.[3]

In 445 B.C. the Republic acted as arbitrator between Artea and Aricia as to a piece of disputed land, but took possession of it herself. Three centuries later a similar thing took place in the case of Neapolis and Nola. As the boasted "Arbiter of the Universe", ancient Rome was not fitted to arbitrate at all. The institution of the "Feciales" did not really approach arbitration in any real sense. The origin of our international system of arbitration cannot be traced back as far as this. It began with the Early Church and developed into a formal system with the Medieval Church and Canon Law. But before tracing the steps from a humble beginning up to the end of the Middle Ages, it will be well to discount a common

[1] *History of the Law of Nations*, vol. i, p. 37 f.
[2] Jones and Sherman, p. 33.
[3] Phillipson, *Studies in International Law*, p. 7.

mistake which affects not only this branch of the subject, but international law and its beginnings in general. It is often assumed that we must begin with Hugo Grotius. Indeed, in 1899, at the Hague Conference, the Ambassador of the United States of America said:

"The germ of Arbitration was planted in modern thought by these solemn words of the 'De Jure Belli ac Pacis':

"'Especially ought Christian kings and States to adopt this way of avoiding arms.'"

But this assumption is quite incorrect. The germ was not planted in the seventeenth century by Grotius, but by the Early Church; later to be developed into a regular system by the same power.

The following sketch will endeavour to show that there was, in the Middle Ages, a tribunal of International Law established at the Vatican, with the only common judge which at that time independent nations could acknowledge. Neither can it be denied that this often protected the weak, humbled the oppressor, stopped warfare, and gave peace, when brutality and greed of men would have yielded to no other influence.

If we go back to early days, we find that long before Christianity was recognized by the State, the clergy had settled disputes between members of the Church. After Constantine, the bishops as arbitrators were given official recognition by the Emperor, within certain limits. They heard and settled disputed cases. By the middle of the fourth century, ecclesiastical persons were forbidden to go to the State without first consulting their own authorities. Two canons of the Council of Antioch, A.D. 341, show this:

"Canon 11: If any bishop or presbyter, or any one whatever of the Canon, shall presume to take himself to the Emperor, without consent and letter from the bishop of the province, and especially the bishop of the Metropolis, he shall be publicly deposed and cast out, not only from communion, but from the rank which he holds.

"Canon 12: Any deacon or priest who has been deposed, going to the Emperor instead of to the Greater Synod of Bishops, shall receive no pardon, no opportunity of defence, and no restoration."

But this influence was not confined to ecclesiastical matters or persons. Grotius reminds us that the early Christian emperors rarely made war without first consulting the bishops, in order that, if religion interposed any impediment, they might consider it. Thus a great Papal Court was growing, with an International Canon Law, and a Papal Chancery.

"It was a wonderful system, the whole of Western Europe was subject to the jurisdiction of one tribunal of last resort—the Roman Curia. Appeals to it were encouraged by all manner of means: appeals at almost every stage of almost every proceeding." [1]

In the ancient Bull, "In Coena Domini", we find the pronouncement of excommunication against those who—

"forge Apostolic letters and petitions":
"obstruct the conveyance of victuals and other supplies for the use of the Curia Romana";
"persecute persons coming to the Roman See, or sojourning at the Roman Court";
"injure persons having recourse to the Roman Court for matters of business and also pleaders of causes";
"appeal to the Secular Powers against the execution of the 'Letter Apostolic'."

[1] Pollock and Maitland, *History of English Law*, vol. i, p. 114.

It also asserts the right of safe conduct for pleaders of causes. Sections 14–20 of this document are all concerned with the same subject. The secular power is not to override the ecclesiastical jurisdiction, and lastly it condemns those who "occupy the city of Rome and usurp her jurisdiction."

At the beginning of the eighth century Pope Gregory II, in a letter to Leo the Iconoclast, wrote, "are you ignorant that the Popes are . . . the mediators of peace between East and West?" [1]

At the Council of Attigni, A.D. 822, Louis le Debonnaire was reconciled to his three younger brothers, Hugues, Drogon, and Theodoric, upon whom he had forcibly imposed the tonsure. He made open confession of this act, and of his harsh treatment of his nephew, Bernard, King of Italy, and to others. He then performed penance openly in imitation of the Emperor Theodosius.

We now come to the year 1077, and the quarrels of Henry IV. Pope Gregory threatened Henry with excommunication, but also reminded him of a greater power—deposition—which he would use on account of that King's private immorality and public policy being so offensive. Eventually both were put into operation, and Henry's subjects were released from their oath of allegiance. Although the German bishops had sided with the King at the "Council of Worms", yet the nobles quarrelled with him and invited the Pope to visit Germany and arbitrate their grievances. Shortly after this another question was settled in another part of Christendom. Ivo of Chartres, the great Canonist, became of importance

[1] *Supra*, p. 25.

in English history for the part that he played in regard to the quarrel between Anselm and Henry I. It was his mind, with its legal ability, that formulated the Concordat between them.

So far we have confined our attention to the ecclesiastical arbitration of matters which were national or domestic rather than international, although the latter had its roots planted in the former.

Let us now turn then to the Crusades, whose international importance will be discussed in a separate chapter, but here let us examine their contribution to the subject of international arbitration.

In 1187 Gregory, whose pontificate only lasted two months, died on a journey undertaken for the purpose of making peace between the republics of Genoa and Pisa, whose fleets were of the first importance for the third Crusade.

Shortly after, Innocent III, through his Cardinal-Legate demanded the cessation of hostilities by the Venetians against Zara, and put the former under an Interdict.

When Richard of England, whilst returning from the Holy Land, was made a prisoner by the Duke of Austria and later by Henry VI of Germany, the Pope was assailed with entreaties for intervention, including an appeal from Richard himself. Celestine III finally demanded from Henry that the ransom money should be returned and the hostages given up. Innocent III carried on the demand, with the result that although the Emperor did not obey, yet Leopold, Duke of Austria, who had been threatened with excommunication, was brought to

submission. Richard was released, the hostages were returned, and part of the ransom which had already been paid would have been returned had not death prevented its performance. Innocent's letter begins:

"In eo fumus officio, disponente Deo, constituti ut singulorum et omnium saluti consulere debeamus, et universis petentibus tam majoribus quam minoribus, in executione justitiae providere." [1]

It was this Pontiff who had induced Richard and Philip of France to sign a five years' truce.

In the year 1193 the Pope secured the release of the three daughters of Tancred of Sicily, who had been carried off and imprisoned by Henry VI. Twenty-one years later Simon Montfort, the conqueror of the Albigeois, having unjustly detained in prison the infant son of the King of Aragon, his mother appealed to the Pope, and Montfort was forced to release him. The part that was played by the Papacy in regard to John of England and Philip of France is well known, and has been discussed under "Sovereignty", but it is interesting to notice that the Pope claimed that a breach of faith to a treaty—*rupta pacis foedera*—was a matter which came under the jurisdiction of the Church—*ratione causa*. John had appealed to the Pope, having sent a *denunciatio* against Philip.

When we come to the story of the fifth Crusade, we find that the Byzantine emperors had been murdered or mutilated. Isaac Augustus had been blinded and imprisoned. The son, Alexis, having made his escape in a

[1] Ward, *History of the Law of Nations*, vol. ii, p. 48.

Pisan vessel to Ancona, pleaded his cause before Innocent at Rome.

That the Church Councils were International Courts of Appeal can hardly be doubted when the case of Raymond, Count of Toulouse, is considered. From a study of these Councils, it appears that this subject was brought before no less than five of them, from the year 1213 to 1226.

At the Council of Lavour, 1213, the petition of Peter, King of Aragon, was considered, in which it was requested that the lands taken from Raymond and the Counts of Foix and Comminges, should be restored to them; but the decision of the Council was against the petition.

Two years later the Council of Lateran was called together under Innocent III. It was a truly international gathering. There were four hundred and twelve bishops present, including those from Scotland, eight hundred abbots and priors, the ambassadors of many Catholic princes, and the two Latin Patriarchs from the East.

In the seventy chapters of "reform" which the Pope himself drew up, the "peace among Christian princes" finds an important place. At this Council Raymond appeared in person accompanied by his son and the Count de Foix, to demand restitution of his lands which had been taken from him by the Crusaders. His appeal was refused, and his lands declared to be alienated for ever.

In the years 1215 and 1224 two Councils were held at Montpellier, to discuss the subject.

At the Council of Paris, 1226, convoked by the Papal-legate, the subject was yet again reviewed, and as

a result Louis VIII ceased from his pretensions against England, and turned his attention to the Albigeois. The legate excommunicated Raymond, and confirmed to the King and his heirs for ever the lands of the said Count Amauri, Count de Montfort, and Guy his uncle, and ceded to the King whatever rights they possessed over the lands in question. By this time appeals to the Pope from an international point of view had become a regular system.

Boniface VIII, by a Bull, claims that

"all Kings, Emperors, and other Sovereigns, whoever they may be, are subject like all other men, to be summoned before the Apostolic Courts, for every sort of cause: for we, by the permission of GOD, command the whole Universe".[1]

In 1297 the same Pope endeavoured to arbitrate between Edward I and Philip the Fair, concerning their quarrel which had been further complicated by an alliance formed between the Flemish and the English.

Philip, although he protested against the claims of the Papacy, agreed to submit to the arbitration of the Pope, as also did Edward and the Count of Flanders, stating that he did not look upon the Papacy as a higher Court, and that he did not come to Pope Boniface to settle the dispute, but to the Roman Court as arbitrator, and to Benedetto Gaetani, the lawyer![2] Forty years later these two countries were again on the eve of battle, but Edward III, before actually commencing hostilities, appealed to the Pope in such terms as would make it appear that the latter "was a regularly chosen umpire between them".[3]

[1] *Vide* "Ausculta Fili," Moeller, vol. ii, p. 289.
[2] Lodge, p. 52. [3] Ward, vol. ii, p. 50.

War was actually delayed some months after Parliament had declared it, in express deference to the wishes of the Papacy. Even after the outbreak of hostilities, the Pope was still anxious to find a solution. Froissart tells us that:

"On the morning intended for the battle, when the troops were drawn up, the Cardinal of Perigord came to the king on full gallop from Poictiers, where he had left at daybreak, and with joined hands and in the name of GOD, prayed the king to spare the effusion of so much blood, by endeavouring to end the matter by negotiation." [1]

The Hundred Years' War followed.

One of the professed objects (No. 4) of the Assembly of the Council of Basle in 1431, was "to appease the wars between Christian Princes". The determined effort to compel arbitration is clearly seen in the second decree of this Council, in which it is declared that

"any person of whatever rank or condition, not excepting the Pope, who shall refuse to obey the laws and decrees of this or any other General Council, shall be put to penance and punished".

Presumably this includes sovereigns.

One of the first public acts of Pope Alexander VI was to make peace between Spain and Portugal by the Bull "Inter Caetera" in 1493. By this document he fixed the line of Meridian of one hundred leagues west of the Azores and Cape Verde Island. Spain was to have the Western, and Portugal the Eastern division.

This has been called an illustration of "Romish arrogance", but, as the *Cambridge Modern History* points out, "it was in fact only a suggestion intended to prevent disputes".[2]

[1] Vol. i, c. 161, quoted by Ward, vol. ii, p. 51. [2] Vol. i, p. 28.

Leo X was invited to arbitrate between Russia and Poland regarding Lithuania. It is said that the success of this settlement led to the request from Bathory of Poland, and Ivan the Terrible, to Gregory XIII, to settle their dispute. The Jesuit, Antonio Possevino, was sent to Moscow, and arranged terms of peace between them.[1] These last two instances are the more remarkable seeing that Russia owed no allegiance to the Roman Church.

Doubtless many more instances could be given, but these must suffice.

It would appear, therefore, that the custom of appeal to neutral Powers, on the breaking out of hostilities, arose from the influence of the Church in the Christian Commonwealth.[2]

Closely connected with the subject of Arbitration is that of intervention; and in a study of the latter the question arises, "May a State be compelled to make peace by a third Power?" This is important when the claims of the Papacy are remembered. Bynkershoek maintains that it is as unjust to compel peace as war.[3] But there seems evidence to the contrary. This same writer has to admit that in two instances at least it was done. In 1659 the French, English, and Dutch compelled Sweden to make peace with Denmark; and England, Sweden, and Holland bound themselves by a treaty in 1668 to force the Spaniards and the French to cease war and make peace on certain conditions.

The argument of these powers was "the general welfare

[1] Revue des Quest. Hist., January 1855, *vide Catholic Encyclopaedia*, vol. xi, p. 455.

[2] Ward, vol. ii, p. 50.

[3] *Quest. Juris Publici*, l. i, c. 25, Quest. 10.

of Europe", which Bynkershoek calls a pretext, but it is submitted that such is a very real and necessary maxim of the Law of Nations. The League of Nations has given weight to the argument. If such was justifiable under peculiar circumstances in the seventeenth century, it must have been more so in the Middle Ages. This is important because it is sometimes asserted that the Papal system was not arbitration, but tyranny.

Before this subject is dismissed it will be well to glance at the awful conditions of mutual suspicion which existed between the nations, even in the fifteenth century, and so made ecclesiastical arbitration an absolute necessity. The treachery and distrust of the times made it impossible for Edward IV and the King of Picquigny to meet for negotiation of peace, except by erecting a strong trellis-work barrier, with only sufficient room to insert an arm comfortably in the holes—"such as forms a cage for lions".[1]

There is much in the history of the Papacy and the Medivall Church to cause bitter regret, but their contribution to peace in the form of arbitration and intervention was no small gift. The words of Alexander III, written in 1162, recommending peace between France and England, are eloquent and significant.

"Among the good things which render men amiable to their neighbours and pleasing to GOD, we believe to be the most acceptable, PEACE, by which hatred is dispelled, rancour allayed, envy driven away, and anger shaken off. This is what we seek to plant: this is what we wish to bring to fruit among kings, princes, and great men."

[1] *Commines*, Bk. IV, cc. 9–10, quoted by Ward, vol. i, p. 279.

DIPLOMACY

In spite of the fact that diplomacy has not always been regarded without disfavour or suspicion, yet without its aid the ideal of "the family of nations" could scarcely have come into being. The task before us here will be to trace its origin.

There were "no systematic diplomatic relations . . . in the ancient world"; [1] or, as Pardessus reminds us "l'isolement etait la loi de l'antiquite et du haut moyen age: l'approchement des peuples sera la marque caracteristique de la periode moderne". [2]

It did not exist in the ancient world, but it is firmly established to-day. The beginning of this system then must be traced somewhere between these two periods.

Now, seeing that the Early Church refused to accept any status which was short of being "International", it would not be surprising if we found there the beginning of diplomatic practice, and its development into an ecclesiastical system in the Middle Ages. This, I believe, will be shown to be the case.

When bishops had been summoned to Oecumenical Councils—at first by the emperors, and later by the popes—they returned to their dioceses with their instructions as, what might be termed, resident ambassadors. It is interesting to notice that at the Council of Ariminum, A.D. 359, the Emperor Constantius promised those bishops travelling from the West that their means of travelling and subsistence should be provided for them. By the

[1] E. A. Bond, *Encyclopaedia Britannica*, 9th edit., vol. vii, p. 251.
[2] *Us et Coutumes*, p. 296.

time of Justinian it would appear that the chief bishops had a special status in this matter, for we read in the *Novels*, of the term "Apocrisarius",[1]

"Ne episcopi ad comitatum Principis accedant absque systaticis literis,"

the bishops are ordered

"aut per eos qui vocantur Referendarii Sanctissimae Majoris Ecclesiae (i.e. Constantinople) aut per religiosos Apocrisarios cujusque dioceseos sanctissimorum Patriarcharum suggerere si Imperio etc."

In the year 1322 the Pope made a definite claim to the right to have resident ambassadors of the Papal See in every quarter of the world. The Extravagant "De Consuetudine" of John XXII at Avignon begins with the assertion that as the Pope is placed by GOD over all kingdoms and nations, and as he cannot perambulate all countries, he must therefore have lieutenants or legates to represent him and his authority over the people committed to him. Excommunication is to be the immediate penalty for those who resist.

"Super gentes et regna Romanus Pontifex a Domino constitutus . . . qui vero de caetero super praedictis dictos Legatos, aut etiam Nuntios quos ad quascunque partes pro causis quibuslibet sedes ipsa transmiserit, praesumpserint impedire, ipso facto sententiam excommunicationis incurrant." [2]

The practice of sending bishops as ambassadors lasted till the year 1713, when the Bishop of Bristol was plenipotentiary at the Peace of Utrecht; but in the Middle Ages it was the beginning of a diplomatic agency. In

[1] *Novellae*, vi, c. 3.

[2] *Extrav. Com.*, l. i, t. i, c. 1.

accordance with its missionary ideal, the Church sent its representatives into distant quarters of the world. In 1291 John of Monte Corvino went as a missionary to India from whence he sent a description of the Deccan, the southern part of the Peninsula, and its people. He then proceeded to China, of which country the Pope made him Archbishop.

In Germany the vexed state of ecclesiastical matters ever since the reign of Charles V had given the Court of Rome the opportunity for keeping a perpetual Nuntius at the Imperial Court. The fact that the Pope's consent was required for the interpretation and execution of the Tridentine decrees, gave status and authority to this minister. In 1566 a Nuntius had also been established at Lucerne for Roman Catholic Switzerland. "Notaries" were a class of magistrates, as it were, in kingdoms which were otherwise perfectly independent of Papal jurisdiction. Some of these officials at least, received their authority from the Pope.[1]

"Papal Rome has always been a fruitful nursing mother of diplomats, and some authorities have traced the beginning of modern diplomacy to a conscious imitation of her legatine system".[2] However, whether this be wholly correct, or need modification, it seems true that in some degree the roots of our modern system were planted in the organization of the Medieval Church.

But before dealing with the details of this similarity in the two systems, one fundamental principle of great

[1] Ward, vol. ii, p. 402.

[2] W. H. Phillips (*Encyclopaedia Britannica*, 11th edit., vol. viii, p. 300), who cites P. Hinschius, *Kirchenrecht*, vol. i, p. 498.

importance must be mentioned. The law of Agency, upon which the system of ambassadors is founded, was not fully recognized till its formulation by the Canon Law with its dictum, *potest quis per alium quod potest facere per seipsum*.[1] Professor Holland, in another connection, says:

"A representative whose authority only extends to the communication of the will of his principal, is a mere messenger. . . . A representative whose instructions allow him to exercise an act of will on behalf of his principal, is an 'Agent'." [2]

This agency then is first established by the Canon Law, and it will be shown later that these Papal ambassadors, known as Legati a latere, did possess this full authority of freedom of action from their principal, the Pope.

Classification of Diplomatic Ministers.—The Church claimed for its officers a special status, wholly distinct from that of subjects of each kingdom, whether those officers were natives of that kingdom or not. This separate status was claimed for the persons and property of the clergy (clerus) and for that law by which they were governed. Justinian made special laws for the Christian clergy in this respect.[3]

But among the clergy themselves there were clearly defined grades—bishops, priests, and deacons. When therefore the Roman Court chose representatives for any special mission, there were already different grades from which to choose. It is only natural that the most important orders would do the most important work.

[1] C. 68 de R.I. in Sext., quoted by Holland.
[2] Holland, *Jurisprudence*, p. 124.
[3] Hatch, p. 150, and Milman, vol. i, p. 355.

Residence.

"The Romans, safe, as they reasonably concluded in the vastness of their Empire, from foreign invasion, having but little commerce with other nations, neither required nor instituted any resident embassy in foreign countries.

"The Justinian law was unquestionably adverse to the notion of a resident ambassador." [1]

When in the early history of Rome a Roman colony sent ambassadors to the Senate, they were warned to depart immediately,

"ne nihil eos legationis jus externo non civi comparatum, tegeret." [2]

The same thing appears to have been the case with Greece, for Gentilis reminds us that although

"Athenian ambassadors stayed with Demetrius for two years, it may be asserted that they were not resident ambassadors." [3]

It is commonly said that the practice began in the fourteenth century among the great Italian Republics, but here again I think it can be shown that the Medieval Church had resident legates long before that time.

Phillimore agrees that "the Christian Church appears to have afforded the earliest instance of resident ambassadors". [4] He continues by saying that in the *Novels* of Justinian (as already pointed out at the beginning of this chapter) we read of "Apocrisarii", sometimes called Responsales, who seem to have discharged the functions of resident ambassadors for the affairs of the Church at

[1] Phillimore, *Commentary*, vol. ii, p. 184.
[2] Livy, I, vi, c. 17. [3] *De Legationibus*, l. i, c. 20.
[4] *Commentary*, vol. ii, p. 196, where he refers to A. W. Heffter, *Europ. Volk. des Gegenwart*, s. 199.

the Court of Constantinople. The right of sending these officials seems at first to have belonged to Patriarchs only, though occasionally exercised by Archbishops of Ravenna and other Metropolitans. Afterwards they were chiefly employed by the Pope at the Court of the Emperor.

At the Diet of Forchheim in 1077 the Pope was represented by his legate, who was the Bishop of Metz, in other words his resident ambassador.

Some interesting evidence is found in the work of Albericus Gentilis, entitled *De Legationibus*, libri tres, published in 1585. Seeing that this great authority, who so largely influenced Grotius, had to leave Italy on account of his anti-Papal views, his opinions in this connection will carry weight. In writing on the term "legate", he says:

"The title is also applied to many magistrates with duties of their own, like the Papal legate, who, as Guicciardini notes in his 14th book, serves in the army and has charge of the Pope's military operations. To the Papal Court also belong the legates extraordinary, ordinary, and ex-officio, who are mentioned in more than one passage of Pontifical Law."[1]

He then discusses "resident ambassadors", admitting that Ancient Greece knew nothing of such a system, but he suggests, in the following words, that the institution of resident ambassadors probably arose from

"the custom of the embassies of the Provincial and allied nations, which often, unless I am mistaken, remained for some time in Rome."[2]

He offers nothing else in support of this suggestion, and the fact is directly contradicted by the evidence. But he

[1] Bk. I, c. 1. [2] *Ibid.* c. 20.

continues immediately, by asserting—what it is submitted is the real case—that

"It undoubtedly became more prevalent owing to the policy of the Popes, for on their manifesting a tendency to have their own ambassadors everywhere, other princes imitated the practice."[1]

Now it is generally asserted by authorities that during the Middle Ages there was no classification of Diplomatic Agents, that various words such as legatus, orator, nuntius, etc., were used without distinction. Phillimore says that there was only one class till the fifteenth or sixteenth centuries, and then the refinements and vanity (or perhaps economy) introduced the lesser ranks into European Courts. According to Vattel, Louis XI set the example. Kluber tells us that there have been two classes from the beginning of the sixteenth century, and three from the beginning of the eighteenth.[2] If this refers to political Europe, it is undoubtedly true, but it is suggested that this system arose in the Church, and there seems some evidence to prove that there were certainly grades of diplomatic agents in the ecclesiastical Europe of the Middle Ages, and as early as the fourth century, with the rise of Oecumenical Councils, this classification of diplomatic agency becomes evident.

Canon 9 of the Council of Sardica, A.D. 343, states that nuncios are the deacons sent by their bishops to the Emperor with a petition. The canon mentions some of these requests; for instance, clemency for a widow or orphan. It contemplates that such petitions will not be

[1] Bk. I, c. 20.
[2] Phillimore, *Commentary*, vol. ii, p. 246 and footnote.

of international importance, but they are first to be examined by the Metropolitan Bishop as to their fitness to proceed to the Emperor. Thus representations for smaller matters are to be examined by the chief bishop and made by the agency of a "Nuntius" who is to be a deacon—the lowest of the three Orders in the Church. But when we turn to the representatives of National Churches, who have been summoned to the great Councils, they are bishops; and by referring to the African Code—A.D. 419—we find that at the Assembly of Carthage, when two hundred and seventeen canons of the Fathers were passed, the representatives of the Provinces, Numidia, etc., were bishops and were designated "Legates".

Thus the fundamentals of the faith, when discussed in an important assembly, are decided by legates who are bishops.

Canon 5 of the Council of Merida, 666, decrees that a bishop being hindered from attending the Synod, may not be represented by a deacon, but must send a priest as his deputy, who shall sit behind the bishops.

Papal legates have always remained a separate class from nuncios. The former are chosen from the Cardinals, and receive the *plenitudo potestatis* of the Pope, whilst the latter are not Cardinals, and do not possess that authority. These two classes have developed into a formal system.

"Legati a latere" are Cardinals whom the Pope has sent as it were "from his side", clothed with the most ample authority, either to foreign princes or into provinces of the Roman See. In the Decretals, powers almost equal to those of the Pontiff are conferred upon them. These legates are ambassadors of the first rank.

"Legati missi, or Nuntii" are Papal ambassadors appointed to some particular business in a foreign part, with powers limited to their credentials.

"Nuntii Apostolici" are resident Papal ambassadors at foreign Courts; formerly they were called Apocrisarii or Responsales. These are officers of the second rank.

The third rank, "Legati nati", was conferred upon certain dignitaries to whose See or Crown the power and office of legate was permanently annexed. Such were the Archiepiscopates of Rheims, Bordeaux, and Lyons in France; Canterbury and York in England; Salzburg, Cologne, and Prague in Germany; Pisa in Italy, etc. In addition there is the Commissarius Apostolicus, sometimes called Delegatus, an officer sent by the Pope to obtain information on a special matter. The Vicarius Apostolicus is an officer through whom the Pontiff exercises authority in distant parts, and is sometimes sent with Episcopal functions into places where there is no resident bishop, or into heathen countries.

The right of nomination of diplomatic agents is always vested in the sovereign power; in this case the Pope, in his right of what Canonists term *jus devolutionis*.

Under this department of International Law may be mentioned the Church's influence on the "Notary Public". The Civil jurisdiction to which a foreigner may have recourse or be amenable is either "voluntary" or "contentious". The chief method of the former is, that testimony be given before a Notary Public, who is a kind of international officer, whose credit is accepted by all civilized States. When evidence of investigation is required by one State from the authorities of another

State, a Commission generally issues for this purpose what in France is called "Commission Rogatoire", a proceeding familiar to all acquainted with the Canon Law.[1] It takes its beginning from the fact that in earlier times, the bishop who required the testimony of a witness in the diocese of another bishop, issued letters of request, "litterae requisitoriae" or "requisitoriales" for that purpose.

Letters of Credence.—The important part that these documents play in diplomatic service to-day is well known. But what is their history?

It can clearly be shown that they formed a definite part of the Early and Medieval Church system.

Even in the first century St. Paul, writing to the Corinthians, says, "need we, as others, letters of commendation?" [2]

By the fourth century this had become a definite system. By means of these "letters", even lay people found hospitality and care in every part of the world.[3]

It was thrown up against the Donatists, that their letters were only of credit among themselves.

Canon 8 of the Council of Encaeniis, A.D. 341, says:

"Let not country presbyters give letters canonical, or let them send such letters only to the neighbouring bishop. But the chorepiscopi of good report may give letters pacifical . . . called in the West, letters 'formatae'."

A proof of this influence in the Early Church in binding the faithful together, as an international Church, can be found in the fact that Julian the Apostate made an

[1] Phillimore, *Commentary*, vol. iv, p. 718.
[2] 2 Cor. iii. 1. [3] *Vide* Blunt, p. 25.

attempt to introduce something similar among the pagans of his empire.

Canon 11 of the Council of Chalcedon, A.D. 451, orders that after examination "letters of peace" be given to poor persons going abroad, and that "letters commendatory" be given to those persons who are of distinction. Another form was the "letter dimissory" which first occurs at the Council in Trullo, Seventeenth Canon, and was used for one needing it for a permanent change. The Thirteenth Canon of Chalcedon forbids foreign ecclesiastics to exercise their office without "letters commendatory" from their bishop.

In the West, at least, these letters received the Episcopal seal of the diocese to avoid all possibility of imposture.

The Council of Ireland, A.D. 456, in Canon 33 has the same requirements regarding the ministry of English clergymen going to Ireland.

The Council of Tours, A.D. 566, Canon 6, forbids priests and laymen to give "epistolium"—letters commendatory; this being reserved to the bishops. The fact that bishops came from all parts of the world to the Oecumenical Councils, that the Papacy had a diplomatic system, made "letters of credence" a necessity. By the eighteenth century, if not long before that, they had become an important part of international practice. In 1572 Elizabeth arrested the French Ambassador, Du Droc, who was travelling through England without the necessary papers.

Immunity.—The persons of envoys and heralds have always, in theory at least, been respected, but in the Justinian Code they are held to be sacred.

"si quis legatum hostium pulsasset, contra jus gentium id commissum esse existimatur, quis sancti habentur legati: et ideo cum legati apud nos essent gentis alicujus cum bellum eis indictum sit, responsum est, liberos eos manere." [1]

But although these agents were to receive immunity in the country to which they were sent, they received little or no protection in those States through which they must pass. In this special direction the Church's influence was exercised, for in the Bull "in Coena Domini" s. 12, an anathema is pronounced against anyone who shall injure those coming to the Roman Court, as pleaders of causes or on any other business. Furthermore, if the assumption that the chief bishops were the resident ambassadors of the Pope be correct, then modern practice was anticipated in the fact that Canon 1 of the Council of Orleans in A.D. 511 establishes the inviolability of churches and bishops' houses. Sacred precincts were from earliest times inviolable, and asserted as such again and again at different Councils.

It could not be expected that the Church was always able to enforce this important part of international custom, and there were violations of sanctity by deeds of violence and lawlessness in the Middle Ages; nevertheless, "there were not many such cases, and those instances have been exaggerated".[2] Papal sovereignty and the true spirit of chivalry were opposed to it. Ward, quoting from Joinville's *Life of St. Louis*, speaks of it as being the custom in the thirteenth century for the enemy to seize the ambassador on the death of his prince and make him

[1] *Dig. L.*, t. vii, s. xvii; *De Legationibus*, Phillimore, vol. ii, c. 5.
[2] Phillimore, *Commentary*, vol. ii, p. 198.

a prisoner or slave. But Miruss [1] objects and points out that the passage only has reference to the Patriarch of Jerusalem, who was made captive by the Emirs of Egypt, and that it cannot be taken as applicable to Christian princes.

Emperor Frederic I secured safety for Papal legates who had misconducted themselves towards him. The oppressive tax upon foreigners, *droit d'aubaine*, was, even in France, where it long remained in force, remitted in favour of foreign ambassadors. The Crusaders scrupulously respected the character of an ambassador, even of the Infidel foe, but the same thing cannot be said of the Turkish or Mohammedan forces, who capriciously ill-treated the Christian representatives.[2]

Canon 5 of the Lateran Council, 1512, published three Bulls, one of which contained the offer of "Safe Conduct" to the Bohemians, if they would come to the Council. As immunity must always rest on good faith, it should not be overlooked that in the Middle Ages there was little or no public opinion to create a standard of honour, apart from the influence of the Church.

Exterritoriality.—The Roman maxim, *Extra territorium jus dicenti impune non paretur*, found an exception in the case of Christians in Infidel countries. The great difference in character of Christianity from all other religions made it difficult, if not impossible, for Christian traders in Ottoman or Infidel dominions to be subject to the law of that land.

By the sixth century the custom of "Exterritoriality"

[1] *Das Europäische Gesandts Schaftsrecht*, s. 333, quoted by Phillimore.

[2] Phillimore, *Commentary*, vol. ii, p. 198.

began to develop. After the fall of the Eastern Empire, the code of the Visigoths allowed foreign merchants to be judged by one of their own countrymen. After the Ottoman Power was established in Europe, Christian nations trading with lands subject to that Power obtained from it at different periods what were termed "Capitulations"—the exclusive control over their own countrymen.

FINANCE

FROM the time of Constantine, when the Church was first "established", this ecclesiastical corporate body became a possessor, and later also a trustee, of wealth.

By the end of the sixteenth century the Church owned from one-fifth to one-third of the soil of Europe in mortmain, and had revenues larger than those of kings.[1]

The first year's income of every priest went to the Pope as "annates". The laity paid one penny per annum on each hearth.

But it was the Crusades which added so largely to this department of the Church's work. Absent princes committed their dominions to the trusteeship of the Pontiff, who also gathered a temporary tax from all nations for this enterprise, and this eventually became a permanent charge, the proceeds of which he could spend as he wished.

Indeed, so great was this responsibility, that the Pope appointed Committees of Management to deal with these funds which were not to be kept at Rome, but the expenditure was to be notified to the Roman Curia.

England under Henry II raised £70,000 by means of the Saladin tithe.

The international character of the Crusades will be dealt with in another chapter, but this fact, together with the different Papal dues, had a curious influence on modern practice.

The lending of money on interest was absolutely forbidden by the Canon Law. It came under the censures

[1] *Cambridge Modern History*, vol. i, p. 621.

of the Church and was definitely forbidden by some of the earliest Oecumenical Councils. As a result, money-lending and most banking were in the hands of the Jews, who besides lending money gave letters of credit and bills of exchange. But with the increase of commerce and the international character of Papal dues, coming as they did from all parts of Central and Western Europe, Italian bankers saw their opportunity and began to collect and transmit sums of money. The varieties of coinage being almost infinite in the Middle Ages, when so many feudal lords and independent towns had the right to mint money, a small charge which the banker made for his trouble was easily allowed in spite of the Church Laws against usury. The Papacy is said to have become the leading employer of these Italian bankers for the purpose of collecting and transmitting sums of money. The largest firms for such business were in Tuscany and especially in Florence; this being due to the fact that they were near to Rome and their employment by the Papacy.[1]

Before long these bankers began to advance money to kings and States as well as individuals, and to receive interest till the sums were repaid. They avoided the censures against usury by making the loan free of interest for a very short period—during which time, they knew it could not be repaid—and then a penalty was fixed for non-payment or breach of contract![2]

[1] For an interesting system of money-lending to poor persons at a reasonable interest, established at Orvieto in 1462 by the Franciscans, *vide Medieval Contributions to Modern Civilization*, p. 241. It was very popular, as is witnessed by the fact that eleven more such places were founded in Italy during the next thirty years.

[2] L. Thorndike, p. 328.

TREATIES

A NEW era in the history of any country is revealed at that stage in its progress at which treaties are introduced as part of national diplomacy. In spite of the intrigues carried on by means of secret treaties on the one hand, and the levity with which solemn oaths have been treated on the other, it cannot be doubted that the substitution of a treaty for the festering sore of war has done much to preserve peace. But the value of the treaty will depend in no small measure on the fidelity of the parties to the contract.

It should then be of peculiar interest to inquire what, if any, was the influence of the Church upon this branch of the Common Law of Nations.

The various kinds of agreements which have existed among civilized States cannot be discussed here, but it must be admitted that they did not originate with Christianity, but can be traced back to the times of antiquity.

But if it be asked "when did they create the statute book of the law of nations?" then Dr. Lawrence gives for reply, "1856, with the Declaration of Paris".[1] However, between these modern law-making treaties and the mere pacts of antiquity, there is an important period in the history of this subject, during which time the Christian Church was taking a leading part. Its influence was working in two directions.

It exercised that controlling power which in later times fell to the lot of the Great Powers. But it endeavoured also to inculcate a fidelity and morality which was not a strong feature of the ancient world.

[1] *International Law*, p. 45.

Furthermore, it established at Rome a "Register of Agreements", which to some degree anticipated one of the clauses in the Covenant of the League of Nations.[1]

The Canon Law based its right to establish peace, hear appeals concerning breaches of treaty, and to arbitrate upon them upon various passages of Scripture, but the validity of their arguments need not be questioned here. The claim had certainly been encouraged by the Early Christian Emperors. The Code of Theodosius made the appeal to Rome, with that decision, final. After all, it was the only power which could occupy such a position in its age, and in the centuries which followed.

The Middle Ages was not a time in which diplomacy could easily flourish. It was an age of brutality, lust, and suspicion, and the same may be said of the earlier centuries, only with greater force.

Therefore the Pope as the head of the Universal Church claimed the right to adjudicate upon disputed agreements. When John appealed to the Pope against Philip of Normandy, the Pontiff in his reply claimed this right *ratione causae*, to hear and adjudicate, *rupta pacis foedera*. In the exercise of this power he nullified treaties and absolved the parties from their obligations.

Ferdinand was so released by Pope Julius II; Francis I by Pope Leo X and Clement VII; Henry II of France by the Papal-legate Caraffa.

Modern standards might object to this Papal power as contrary to the freedom of States, but it has to be remembered that we are dealing with the Middle Ages, and it has been shown elsewhere [2] that this ecclesiastical authority

[1] *Vide* p. 220.

[2] *Vide* p. 49.

contributed enormously to international peace. Even Phillimore,[1] who has argued against the power of the Papacy, admitted that it is not competent for a State to adopt customs or make treaties which come into collision with Divine or Natural law, and supported this contention by quoting from the *Digest*: "Pacta, quae turpem causam continent, non sunt observanda". That the Church's power was objectionable to princes, cannot be doubted, for it gave rise to a clause in treaties and other public documents, to the effect that the contracting parties would neither seek nor accept release from the oath, either personally or through the agency of any other person.

"Jureque jurando corporaliter praestito fidem nostram quam solemniter adstrinximus, nullo unquam tempore aut modo a nobis aut aliis infrigendam omni quorumlibet qualiumque contradictione, exceptione generali ac speciali restitutione, dispensatione ac absolutione etiam Pontificia aliisque beneficiis Legis seu Consuetudinis aut nominis perpetuo exclusis." [2]

But this Papal power was also viewed from another angle, for the Interdict of the Church was the most powerful sanction of its age. Therefore, as Ward tells us, treaties were commonly entered into, safeguarded by the clause of Papal Interdict in case of non-fulfilment.[3]

But quite apart from the sovereignty of the Papacy, the Christian religion did much to make an oath binding and very sacred. This is clearly revealed in the Church's influence on Chivalry, which in its age was an international

[1] *Vide Commentary*, vol. ii, s. li, and vol. i, s. xxxii.

[2] Schmauss (1163), *Corpus Juris Gentium Academicum*, quoted by Phillimore, vol. ii, p. 82.

[3] Vol. ii, p. 54.

brotherhood having honour and fidelity as its chief principles.

Now honour and good faith are the essentials of any agreement, and "all treaties are covenants *bona fide*, and must be equitably construed". Without honour among the contracting parties, treaties are rather a cause of strife than an incentive to peace. That Christianity demands this good faith, and a high standard of mutual good-will is fully recognized by the language of the principal treaties of Europe,[1] although the entrance of infidel nations into modern international affairs has modified the language of modern diplomatic documents. As early as Charlemagne treaties began "In the name of the Holy Trinity", or of Our Lord Jesus Christ, and this custom remained in force until the middle of the nineteenth century.

The honour of a heathen in the Middle Ages was not accepted or even admitted. He was outside of the Commonwealth of the Nations of Christendom, therefore his word was unreliable, his religion false and inimical to the true GOD. No terms could be made with him. The ancient Bull, "In Coena Domini"[2] anathematized all those who supplied arms or aid to the Turks or Saracens or other enemies of the Christian name. The Pope himself, however, was obliged to break the rule on more than one occasion. Lucius III, in 1185, was glad to solicit the aid of Saladin, and Alexander VI sent to Bajazet to seek for his help against the invasion of Charles VIII. But these instances were exceptional, and Grotius tells us

[1] *Vide* Westphalia 1648, Paris 1763, etc.
[2] Section 7.

that in the seventeenth century Christian nations cannot make treaties with infidels.

International Law, both Medieval and Modern, was the product of Christian nations, and no other nations had part or lot in it till the Great Powers admitted Turkey in 1856 by the Treaty of Paris, and Japan later, in 1889, when these Powers abolished Consular jurisdiction in that country.

However, long before this, commerce had made it essential for Christian countries to have some form of intercourse with these heathen nations, and the English lawyer, Coke, sums up the situation in his analysis of treaties, by saying that of the four classes, viz.: 1, Foedus pacis; 2, Foedus congratulationis; 3, Foedus commutationis mercium; and 4, Foedus mutui auxilii, the last only, is not possible between Christian States and the infidels.

We now turn from such treaties as the Middle Ages possessed to that valuable contribution of the Church which was contained in the "Regesta" or register of the Roman Pontiff.[1] With the Pontificate of Innocent III, a new era begins, certainly in regard to the registration of international documents, and has continued, almost without a break, to the present time; although unfortunately small portions of the Register have been lost.

Documents proceeding from the Papal Court were engrossed by the notaries and copies preserved in the Papal Chancellary. It seems probable that this register

[1] For this subject, see Mann, *Popes of the Middle Ages*, vol. i, part i, p. 305, and vol. ii, p. 1 ff., from whom original sources are quoted.

was begun even before the time of Constantine, although no direct proof can be given. It may be that the controversies of the Early Church regarding the date of Easter and the questions concerning heresy made such a procedure necessary for the ordering of the Church. St. Jerome refers to the "Archives" of the Roman Church.[1] Cardinal Deusdedit, the greatest of the eleventh-century Canonists, has preserved some extracts from the Register of Honorius I of the seventh century. It is suggested that they were collected for the purpose of the Canon Law.

The *Collectio Britannica* contains fragments of Papal letters from the fifth to the eleventh centuries.

Boniface, writing to the Bishop of Thessalonica, *c.* A.D. 420, says that the documents of our archives (*scrinii nostri monimenta*) show that to him had been intrusted the care of the Churches throughout Macedonia and Achaia.[2]

During the Pontificate of Innocent III private persons could apply for the registration of Papal letters, for it is on record that this was done by Giraldus Cambrensis.

He was not only allowed to examine the register of Eugenius III, but

"tres litteras commissorias . . . in registro P. Innocenti . . . ad perpetuam rei memoriam poni fecit."

He then proceeds to describe a register.

"Registrum autem facit papa quilibet, hoc est librum ubi transcripta privilegiorum omnium et litterarum suarum super arduis causis continentur."[3]

[1] Died A.D. 420.
[2] P. Jaffe, *Regesta Pont. Rom. ab condita Eccles.*, 350.
[3] *De Giraldo Menevensi*, op. i, p. 398.

By the time of Pope John XXII, in the early fourteenth century, if not before, it had become a regularized thing with a fixed charge for the registration of documents. It has been termed "Registrum de negotio Romani Imperii". In the thirteenth century it had been found necessary to separate the general or, shall we say, international documents from those of less importance: the former weretermed *litterae de Curia*, or simply Curiales, whilst the less important ones were *litterae communes*.

In the following century a register of petitions was also preserved, in which were recorded not only Papal documents, but also memorials to the Papacy, to which replies were issued. On the importance of such, to every nation in Europe, very little need be said; so valuable was it according to Delisle,[1]

"that no matter under what aspect it may be studied, the result of such study will be a gain to learning and every Medieval scholar."

It must not be forgotten that this Pope (Innocent III), during a reign of eighteen years,

"directed the affairs of Europe with a loftiness of aim, a surety of view, a firmness and love of justice which must win the admiration of every impartial man." [2]

[1] *Actes d'Innocent III*, p. 1.

[2] *Ibid.*, p. 4.

PRECEDENCY

THE question of precedency among States, in so far as ceremonial is concerned, is to-day of no vital importance. The modern system of signing a treaty in alphabetical order has done much to preserve peace and good-will, and in theory at least all sovereign States are equal in international law. But it was not always so, for even as late as 1672, Charles II of England commenced hostilities against the United Provinces because one of his royal yachts had not been properly saluted.[1]

In the Middle Ages this subject claimed much attention. Precedence carried with it a status and a power which were eagerly sought, and contributed much to a nation's influence and importance.

Now it might be assumed that this priority among States was determined entirely by the strength of the various fighting forces, and no doubt it was true to some extent then, as now, that in the last resource "might is right", but a nobler power than that of brute force was at work; and this higher power, it will be seen, was exercised by the Christian Church.

The Church as an ecclesiastical State had its various ranks of status clearly defined. The Pope was the head. Next to him came the College of Cardinals, and so on, down to the lowest ranks of the Religious Orders.

Therefore, as the aim of the Papacy was to absorb the secular into the spiritual, the different nations fell quite naturally into the system of precedency under the Pontiff. Doubtless this was not always pleasing to the nation in

[1] Lawrence, *International Law*, p. 290.

question, but it was more or less accepted, as indeed there had to be some such system, and no other authority was at hand which could undertake such a task.

Two different circumstances compelled the Pope to decide this question of the priority of States.

First of all there was the ritual or ceremonial sphere of the Church in its international dealings. In the great processions on important occasions the ambassadors of different sovereigns had various duties and places allotted to them. It is claimed that as early as Constantine, the Emperor held the bridle of the Pontiff's horse.

In the Papal Chapel each sovereign had his own seat assigned to him; and the order of this seat was the order of precedency. The priority of place in the Pope's Chapel was generally governed by the priority of the "conversion to Christianity" of the people represented by that seat.[1]

The other circumstance which compelled the Church to decide the question, and was really much more important, was that of the rights and status of different nations at the International Assemblies of the Church, in Council or Synod. Here the question of debate and voting was concerned, and often in very far-reaching matters. It was not so much a matter of ceremonial as of authority. In this connection it is well to remember that even to-day in spite of the fact that all sovereign States are equal in International Law, yet the Great Powers do exercise an authority and influence in many directions, which is not shared by the smaller States.

In the Middle Ages the question often came under review, for in course of time it was only natural that the

[1] Ward, vol. ii, c. 16.

order of precedency recognized in the Papal Chapel should be difficult of fulfilment and be questioned.

At the Council of Pisa, when the ambassadors of England, France, Portugal, Bohemia, Sicily, Poland, etc., were present, the "order of precedency" of members of the Council was decreed. A hundred years later Pope Julius II drew up a table of precedency of European States; but it has been doubted whether it was really effective either in the Councils or the Pope's Chapel. Towards the end of the sixteenth century Pope Sixtus V decreed that when monarchs and cardinals met at table or at ceremonials, the first place was to be taken by a cardinal, the second by a monarch, and so on alternately. It is not without significance—although outside of the Middle Ages—that in the year 1600 when the war between Elizabeth of England and Philip of Spain was drawing to a close, Commissioners from both nations having met at Boulogne for a settlement of peace, a dispute between the representatives as to their rights of precedency delayed the desired peace for some years, although all parties were in earnest about a final settlement.

Sir R. Cotton, the antiquarian, was asked to draw up "a briefe abstract of the question of precedency between England and Spaine".[1] He concludes his work by asserting that the order is governed first of all by antiquity, but it is to be "Christian" antiquity. The influence of the Church had not been entirely lost. Cotton then adds that the eminence of the throne is to be the second determining factor.

Shortly after this, Hugo Grotius claimed priority for

[1] Ward, vol. ii, c. 16.

States in accordance with their conversion to Christianity; but unfortunately contradicted his contention later, when he was ambassador, and it militated against himself in the controversy between England and Sweden in 1637.

The particular order or orders of precedency observed during the Medieval period of history would make curious reading when compared with the positions which those States occupy to-day, but it seems beyond question that the root principle was formulated to a very large extent by the Church. Furthermore, it is submitted that although the Papal power in this respect may be criticized, it cannot be denied, and on the whole it helped forward international peace and order.

"Since the Reformation," says Ward, "this has been a subject on which all States quarrelled like madmen or pouted like children." [1]

[1] Ward, vol. ii, c. 16.

MARRIAGE

THE legal relations arising from marriage have in all countries been influenced by religion, and seeing that International Law sprang into being among Christian States, it cannot be doubted that it was the Christian Church and its Canon Law which had the greatest influence in moulding this branch of private International Law.

Monogamy.—Where the influence of Christianity has not been felt, polygamy, speaking generally, has been the rule. This has not always been recognized. It is more than a little surprising to find that so great an authority as Professor Westermarck should make the following remarks in his exhaustive treatise, entitled *The History of Human Marriage*: [1]

"Considering that monogamy prevailed as the only legitimate form of marriage in Greece and Rome, it cannot be said that Christianity introduced obligatory monogamy into the Western world. . . . No Council of the Church in the earliest centuries opposed polygamy and no obstacle was put in the way of its practice by kings in countries where it had occurred in times of paganism."

What is meant by "the earliest centuries" may be gathered from the fact that the author proceeds to quote an instance in the middle of the sixth century.

Now it can be shown that the first part of this quotation is most misleading, and the second statement is totally untrue.

In regard to the marriage systems of the ancient world it is impossible to enter into a detailed discussion here.

[1] Vol. iii, p. 50.

Many terms need careful definition and many questions would have to be raised, but certain facts seem beyond dispute, and from these facts it will appear that it is most misleading to assert that monogamy was the only legitimate form of marriage in ancient Greece and Rome, unless theory is to have but little connection with practice in our investigations.

It is true that for the most favoured class, the patricians, and this class only, "confarreatio" was the only ceremonial system of marriage, and this did not allow of a second marriage by this particular system, so long as the first partner was living, but for a large part of the Roman populace who did not come under the category of patrician, there was no formal system of marriage, but only a free contract, or as it really was, no contract at all. This was termed "Concubinatus", and it is true to say that in one form it was monogamous, but in another form, termed by the Romans "Paelicatus", and under the Greeks, by a similar designation, it implied the union of a man with a mistress. A quotation from the *Encyclopaedia of Religion and Ethics* will make this more clear.[1]

"By the close of the Republic, we have the testimony of Granius Flaccus (*Dig.*, i, 16, 144) to the fact that 'now' the name (concubine) was given to the mistress of a married man, and such liaisons were not uncommon (*Cicero De Orat.*, i, 183). The epithet was thus applied by Juvenal (ii, 57) to a slave girl living in intimate relations with her owner; nor was a concubine of this kind treated as illegal till the year A.D. 326 (*Cod.*, v, 26). We even find a discussion of the case where a wife in a marriage contract stipulates for indemnity, should the husband after marriage again take a concubine" (*Dig.*, xlvi, 1, 121).

[1] Article by W. Kroll, vol. iii, p. 819.

This form of polygamy—for such it really was from a moral point of view—was so prevalent that it was the subject of condemnation of a number of Church Councils, as will be shown in dealing with the second question.

When we remember what kind of a Rome it was in which Christianity first entered, it will be seen that a free and informal contract of marriage or concubinage could hardly remain monogamous from the moral point of view.

Apart from the evidence of St. Paul and St. John,[1] Rome was revealed in its utter depravity by Seneca, who spoke of it as a cesspool of iniquity[2]; by Juvenal, who pictured it as a filthy sewer, into which have flowed the abominable dregs of every Achaean and Syrian stream.[3]

"The sensuality was probably more shameful, and more shameless than has ever been heard of in history."[4]

This prevailing licentiousness demanded an edict in the year 17 B.C., the title of which speaks for itself: "L. Julia de adulteriis coercendis."

Bastardy was recognized, and perhaps even encouraged, in so far that the children were adopted as State property. Marital faithfulness was not required; and this is admitted by Professor Westermarck when he says:

"The Romans defined adultery as sexual intercourse with another man's WIFE: the intercourse of a married man with an unmarried woman was not regarded as adultery."[5]

[1] Rom. i. 24–7; Rev. xvii. 5.
[2] Cf. Sallust, *Cat.*, xxxvii, 5, quoted by Farrar.
[3] Juvenal, iii, 62; Tacitus, *Annales*, xv, 44.
[4] Farrar, *Life of St. Paul*, vol. i, p. 332.
[5] *History of Human Marriage*, vol. iii, p. 50, where he also quotes from *Dig.*, i, 16, 101, 1.

When this standard of morality is compared with the teaching of Christ, who denounced adultery even in the mental sphere,[1] there can be little doubt that Gibbon was right when he wrote:

"the dignity of marriage was restored by the Christians." [2]

We now turn to the second statement. No Church Council in the earliest centuries, so it is asserted, condemned polygamy. This is totally untrue.

At the Council of Neocaesarea, held in the year A.D. 315, this subject came under review, and Canon 3 was decreed, the title of which runs: "The time (of penance) of polygamists is well known." The full wording of the canon is: "Concerning those who fall into many marriages, the appointed time of penance is well known, but their manner of living and faith shortens the time." The penalty of polygamy then was well known in the Church by the beginning of the fourth century, and was definitely ratified by this Council. This decree was incorporated into Gratian's *Decretum* [3] and so formed part of the Corpus Juris Canonici.

Moreover, there is evidence to show what the penalty actually was, for by referring to Canon 80 of the first Epistle Canonical of Basil, Archbishop of Caesarea in Cappadocia, written to Amphilochius, Bishop of Iconium, we are told that

"The Fathers say nothing of polygamy as being beastly, and a thing unagreeable to human nature. To us it appears a greater

[1] St. Matt. v. 28.
[2] *Decline and Fall of the Roman Empire*, c. 44.
[3] Pars. 2, causa 31, quest i, c. 8.

sin than fornication. Let therefore such (as are guilty of it) be liable to the Canons, viz. after they have been mourners one year, let them be prostrators three years, and then be received."[1]

The writer of this epistle died in the year A.D. 379. Canon 7 of the first Council of Toledo, A.D. 400, declares that

"he who with a faithful wife keeps a concubine is excommunicated."

Two years later the Roman Synod declared the same thing. As early as the year A.D. 314 the Council of Ancyra prescribed seven years' penance for adultery, and the same decree was passed at the Councils of Lerida in 524, and Nantes in the year 600.

It is therefore contrary to the evidence to say that the Church did not oppose polygamy, although doubtless she often found it difficult to enforce the Canons.

"Constantine's laws protecting womanhood, whether virgin, widow, or married, were the direct product of the Christian principle of the sanctity of marriage."[2]

Divorce.—If evidence were needed to prove that Christianity has done much to raise the status of women, it could easily be found in a study of the subject of divorce. It is admitted in all quarters that the Christian Church revolutionized European legislation in regard to it.[3]

In the Canon Law of the Church, marriage was a sacrament, and as such was indissoluble. In Roman Law, on the other hand, although divorce was perhaps but rarely sought before 500 A.U.C., yet there never was

[1] *Vide Epist.* 38, vol. iii, p. 223, *Nicene and Post-Nicene Fathers.*
[2] *Encyclopaedia of Religion and Ethics*, vol. iii, p. 819.
[3] Westermarck, vol. iii, p. 327.

a time in the history of that country when such was impossible. Where a union had been created by "confarreatio", there was some difficulty and formality, but no impossibility. For all other cases it was simplicity in the extreme. "Free" marriages could be broken as easily as they were made. The result of such a system can easily be imagined.

"What wonder, says Muirhead, with such unqualified freedom of divorce that Jerome should tell us he had seen in Rome a man living with his twenty-first wife, she having already had twenty-two husbands.

"What wonder that we should have a bishop of Amasia some thirty or forty years before Justinian, declaring that men changed their wives just as they did their clothes, and that nuptial beds were removed as often and as easily as market stalls." [1]

It is asserted that by the Ciceronian age almost all the well-known ladies had been divorced once at least, and Seneca has told us that some women counted their years not by the consuls, but by their husbands! [2]

Now all this forms a striking contrast with the teaching and discipline of the Church, which maintained that marriage as a sacrament was absolutely indissoluble.[3]

To the Christians it was not merely a civil contract, but a union made sacred and ratified by God. It is this conception of the subject which explains the canonical principle. Being a sacrament, certain aspects of the old Roman Law had to be altered.

The Canon Law asserted that no marriage could be a sacrament without the consent of both the parties to the

[1] *Roman Law*, 2nd edit., p. 356. [2] *De Beneficiis*, iii, 16, 2.
[3] *Vide* S. Thomas, *Summa contra Gentiles*, and *Decretum*, ii, 32, 7, 2.

union. Therefore the absolute power of the father was thus negatived, and under Justinian's legislation a father could not force his son or daughter in marriage,[1] but the right of the father to have a voice in the matter was stoutly maintained.

Later, according to Gratian's *Decretum*,[2] the Canon Law went beyond that of Justinian and enacted that a marriage solemnized without the consent of the parent must remain valid as a sacrament. Serious attempts were made to induce the Church to change this view of the subject, but without success. The matter was finally settled, once and for all, at the Council of Trent after a lively debate.

This principle in regard to minors holds good to-day in England, Scotland, and America.

It should be remembered, however, that although there was no question in the Church as to the indissolubility of a true marriage, that is one which had been canonically performed, yet it reserved to the ecclesiastical authority the right to say when the canons had been properly observed. It was the duty of the Church Courts to adjudicate as to whether any particular union in question had been canonically celebrated. Thus arose certain grounds for partial or complete separation. For instance, non-Christian marriages, or those which had not been sacramentally celebrated, were not binding.[3]

A *divortium imperfectum*, or separation *quoad thorum et mensam*, could be obtained, but only without permission to re-marry. The nearest approach to a divorce was *a vin-*

[1] *Dig.*, xxiii, 2, 21.
[2] ii, 27, 2, 2.
[3] Due to Innocent III.

culo matrimonii, by which the Canon Law would dissolve the contract because of a canonical impediment, even though such were only revealed after the consummation of the union. During the centuries this opened up the way for much legal twisting, but the principle of the sacramental bond remained in spite of much abuse.

From the days of Charlemagne the Church law entered the secular Courts of German peoples, and in the tenth century the ecclesiastical Courts had gained exclusive control of all matrimonial causes. It prevailed in France till the Act of 1792. It was the law of England up to the Reformation, and indeed after it, for although Henry VIII appointed a Commission to investigate this question and the "Reformatio Legum" was issued in consequence, nevertheless from 1602, after the decision of the Foljambe case, re-marriage after separation was null and void.

"After this revival of the old Canon Law our ancestors lived for several generations under a matrimonial law of unexampled vigour and narrowness. The gates of exit from true matrimony had all been closed, with the exception of death." [1]

There was no divorce in England till 1857, except by a special Act of Parliament.

The law of Italy to-day in this respect is the same as the old Canon Law.

Such then was the influence of the Church in regard to divorce, and so great was that influence that even to-day in many Roman Catholic countries there is no legal power to break a marriage bond, although those very countries have introduced the civil marriage.

Degrees of Affinity.—An instinct, almost universal,

[1] Westermarck, vol. ii, p. 339.

appears to prohibit marriage within certain degrees of relationship. Nevertheless, in Egypt the marriage of brothers and sisters was admitted without scruple or exception: a Spartan might espouse the daughter of his father; an Athenian that of his mother; and the nuptials of an uncle with his niece were applauded at Athens as a happy union of the dearest relations.[1]

In Rome, from the time of the second Punic War at least, first cousins were allowed to intermarry, and subsequently marriage with a brother's daughter was declared legal;[2] but under the influence of the Church, the law became much more strict. By the Canon Law the prohibited degrees were increased to seven, but were eventually reduced to four by the fourth Lateran Council in 1215; thus making legal marriages between third cousins. Since then the Roman Church has not altered this law, but "dispensations" have been granted on a large scale.

It is interesting to notice that a marriage with a deceased wife's sister was illegal and remained such in England till 1907, and that marriage with a deceased brother's widow was illegal for some years later still. It is still forbidden in many, especially Latin countries at the present day.

Legitimation.—It was Constantine, the first Christian emperor, who decreed that children born in concubinage—*liberi naturales*—might be made legitimate by the subsequent marriage of the parents. Later this was re-enacted by Justinian as a general principle, and widened in its

[1] Gibbon, c. 44.
[2] Livy, *Hist.*, ii, 99; *vide* Jeaffreson, vol. ii, p. 324.

sphere of operation.[1] A mandate in the same terms was addressed to the Bishop of Exeter by Alexander III, and this is preserved in the Gregorian Collection. It became the law of Scotland and most Continental States. It has just recently become the law of England.

Domicile.—In the early part of the Middle Ages the question of domicile would scarcely be an important one, but the doctrine was established in Medieval times and became of importance, first to the Church, and later to the State.

Ecclesiastical questions called forth a whole body of Canon Law on this point. The question would arise in regard to the Sacraments, as a presbyter was forbidden to administer religious rites to a member of another congregation. Then there arose the question of a priest coming under the authority of another bishop *ratione domicilii*. It arose in another direction, in the desire to check the encroachments of religious houses, and a certain portion of the ecclesiastical dues of sepulture—*canonica portio* was ordered to be paid to the Parish Church of the domicile of the deceased who had desired to be buried with the fraternity of another place. Then there was the question of domicile of a woman who having become a widow, then marries again. This was settled by the Canon Law in the following decree:

"Mulier autem quae plures viros habuit successive, si sepulturam non eligit, est cum viro ultimo, cujus domicilium retinet et honorem tumulanda."[2]

This decision that the wife takes the domicile of her last

[1] *Codex*, l. v, t. 27, 10.

[2] *Decretal*, l. iii, t. 12, c. 3.

husband had very far-reaching effects, especially in regard to intestate property. The international importance of this legal principle can best be illustrated by an historical instance, of a much later date.

The question of the succession to the personal property of Charles I by his widow, Henrietta Maria, was contested between the French and English lawyers. The French authorities claimed the property for the daughter, the Duchess of Orleans, maintaining that Charles II and the other children were excluded and disentitled by the *droit d'aubaine* which took effect as Henrietta Maria had died domiciled in France. They asserted that she—the Dowager Queen of England—was a Frenchwoman, the daughter of Henry IV, from whom she received a "dot". She fled from England in 1645, purchased a house in France, and lived there for twenty-five years, till the time of her death.

On the other side, it was argued by the English that it was a clear proposition of Public Law that the wife took the domicile of her husband. This reasoning prevailed. The Canon Law had not been brought into existence without its influence being felt.

Before dismissing this subject, let us glance at the *effect of marriage on the union of States.*

The recognition of the possessory rights of women is almost, if not entirely, peculiar to Christian Europe. Among the ancient nations and the infidel of modern times, the effect of the marriage union upon the political conduct of States can be reckoned almost non-existent. The laws of Rome and Greece did not allow any personal rights of sovereignty. Even among the Emperors there is

no instance of the annexation of any dominion to their female progeny. Among Mohammedan nations the woman is held almost in contempt. The Christian era, however, witnessed a great change in this matter, for although the husband became the administrator of his wife's possessions during her lifetime, the children succeeded to the benefit at her death. This law of the Western nations became an important channel of transfer of lands and the cause of inter-State alliances: and sometimes the cause of wars.

The claims of Edward III and Henry V to the crown of France on account of the marriage of their respective fathers, form a well-known story. The union of the two kingdoms of Britain is another case in point. If we turn from the history of this country, instances are not lacking.

Mary of Burgundy, the daughter and sole heiress of the last duke of that name, brought with her the magnificent dowry of the Low Countries, including Franche-Comté, Flanders, and Artois, to the Emperor Maximilian; and the son of this marriage, Philip the Handsome, married the sole heiress of the crowns of Aragon and Castile. There is also the case of the aggrandisement of the house of Austria in Flanders, and the many fiefs of the crown of France, by which alone that country was rendered formidable. The little kingdom of Navarre at one time stood as a solitary State among the nations of the world; at another, it was annexed to France in the person of Lewis Hutin, by the marriage of its heiress with his father.

In Germany the single duchy of Austria extended itself into an immense dominion by the acquisition of

Spain, Bohemia, and Hungary; and in Spain twelve independent communities were united into one.

France alone, by reason of its Salic law, escaped dismemberment.

"It is really wonderful", says Robert Ward, "how much this mode of alienating dominion operated upon the politics and interests of the world."[1]

[1] *History of the Law of Nations*, vol. ii, pp. 241 ff.

TEMPERAMENTA BELLI

The Gospel of Peace

The part which the Christian Church has played in warfare has not escaped bitter criticism and some sneers, and some of this condemnation is not altogether unjust. History has not failed to record the Church's sins of commission and sins of omission in this respect. That the Spiritual Power called the Material Sword to its aid will cause sorrow and shame to many; but in spite of all that may and has been said in this respect, the fact needs to be emphasized that it is not generally recognized what an important part the Church has played in regard to peace and the amelioration of war. A Gospel which has "Universal Brotherhood" as one of its fundamental doctrines, could not fail to reform the natural greed and suspicion of the nations.

"As the Roman Empire fell, the advancing tide of barbarian invasion swept away the bulwarks of civilization. Warfare was restrained by no rules," but "Christianity softened the manners and mitigated the cruelty of the barbarian nations as, one by one, they entered the fold of the Church." [1]

"If we pause to recollect the bloody injunctions of the religions professed by the conquerors of Europe before their conversion, and the manner by which they were commanded to render themselves acceptable to Odin, the chief of their gods, we cannot but be sensibly struck with the change which a few centuries, under the influence of Christianity, had made in the maxims of the world." [2]

[1] Lawrence, *Principles of International Law*, p. 25.

[2] Ward, vol. ii, p. 43; *vide* also *Ecce Homo* (Seeley), c. 19 ff, for a discussion of this subject.

As early as the fourth century, one of the greatest monarchs—the Emperor Theodosius—had received, not an admonition, but a most unqualified denunciation of his conduct. Having murdered indiscriminately seven thousand men at Thessalonica, he approached the Church to pay his accustomed dues, but was denounced by St. Ambrose, Archbishop of Milan, who refused him admission to the Church, as "his hands were still dripping with blood of that unjust murder". Theodosius returned home ashamed and penitent. It is not difficult to imagine how different would have been the reception of such a monarch by the priests of heathen times.

At the Council of Thionville, 844, presided over by the Bishop of Metz, three princes were present, Lothaire, Louis, and Charles, who were admonished to live in unity and brotherly love. This they promised to observe.

It has already been shown that the Bishop of Rome acted as an international arbitrator, and the letter of Alexander in 1162 shows that the Papacy had not forgotten its ideal of "peace on earth". This Pontiff, in commending peace between the Kings of France and England, wrote:

> "We believe to be most acceptable to GOD that charity in the heart, which operates as a bond of union to different minds. . . . This good is peace, by which hatred is dispelled, envy driven away, and anger shaken off. . . . This is what we wish to bring to fruit among kings, princes, and great men—the sons of the Church."

Neither does it seem that these ideals of the Church were entirely lost upon the nations, for just about this

time—1124—during the Pontificate of Calixtus II, it is said that:

"There was such peace in Rome that neither citizen nor stranger need carry arms for his protection. He (the Pope) had not only made the Papacy dominate, but even rule the Western world for a time." [1]

There is a further indication of this influence, in the respect which was paid to religious buildings. Monasteries and churches were often, if not generally, spared in warfare. Alaric, in the midst of sack and pillage of the "richest city of the world", gave orders forbidding any harm to the churches of the Apostles, or to unresisting citizens. Alaric and many of his Goths were Christians.

Luitprand, King of the Lombards, when on the point of plundering the same city, withdrew his troops, in accordance with the Pope's request, and performed his devotions at the shrine of the Apostle.

But quite apart from this moral influence, which cannot easily be tabulated, it can be shown that the Church was formulating a body of custom and law which was revolutionizing the warfare of the nations.

We will now proceed to investigate in more detail the Church's attitude towards war in general and her efforts for peace.

"Quid sit jus Militare?"

No social evil exercised the mind of the Early Church more than that of war. It was a big controversy ranging itself into two schools of thought. To Tertullian and his

[1] Tout, p. 149.

followers war and Christianity were incompatible. No soldier could be a Christian.

"The view was widely prevalent in the Early Church that war was an organized iniquity with which the Church, the followers of Christ, could have nothing to do. This sentiment was expressed with varying degrees of lucidity and emphasis by Justin Martyr, Tatian, Irenaeus, Tertullian, Origen, Athanasius, Cyprian, and Lactantius." [1]

Lactantius says:

"It is not lawful for a just man to engage in warfare, since his warfare is justice itself." [2]

St. Basil of Caesarea insists that, as:

"Acts done in the attacks of war are distinctly intentional,"

therefore they constitute murder: [3] while Tertullian asks the question:

"Shall the son of peace take part in the battle, when it does not become him even to sue at the law? And shall he apply the chain, the prison, and the torture and punishment, who is not the avenger even of his own wrongs?" [4]

But the view held by St. Augustine, that war under certain conditions is a necessity, a sad necessity, to be guarded and limited in all possible ways, was incorporated into the Canon Law,[5] and has been accepted by every Christian country. This is not the place to discuss what might have been the condition of the world to-day had Tertullian's view been accepted by the Universal Church. What might have been is always a matter of conjecture,

[1] Hastings, *Encyclopaedia of Religion and Ethics*, vol. xii, p. 168.
[2] *Div. Inst.*, vi. 20. [3] *Epist.*, 188.
[4] *Vide De Corona, de Idololatria.*
[5] *Vide* Holland, *Studies*, c. 2; also Walker, *History*, c. 3.

but there are many who feel that this Christian school of thought gave to the world a testimony and philosophy which, although never totally forgotten, is receiving its due attention only in the present generation. Nevertheless, it will be seen that Augustine's contribution, and its influence through the Canon Law, was no small gift to the peace of the world in Medieval times: an age of greed and brute force. In a famous letter to Count Boniface, Augustine [1] opposes Tertullian's contention with these words:

"Pacem habere debet voluntas, bellum necessitas ut liberet DEUS a necessitate et conservet in paci." [1]

In his work, *Contra Faustum*,[2] he points out what may constitute a just cause of war, and the vices by which warfare may become immoral and unjust. In the early seventh century, Isidore, Bishop of Seville, attempted a classification of wars and defines *bellum justum*. These definitions and questions, together with the moral precepts of Augustine, found their way, side by side, into the *Decretum* of Gratian, in Causa 23 of the second part, *De re Militari et de Bello*. Isidore classifies war in the following words:

"Quatuor autem sunt genera bellorum, id est justum, injustum, civile et plusquam civile.

"Justum bellum est, quod ex praedicto geritur de rebus repetitis, aut propulsandorum hostium causa. Injustum bellum est quod de furore, non de legitima ratione initur, . . ." etc.[3]

In dealing with the subject of war, he discusses such subjects as the solemnities for declaring war, the formalities in making treaties, punishment for deserters

[1] *Epist.*, 205. [2] *Liber*, 22. [3] Isidore, *Etymol.*, Bk. XXVIII.

and for other military offences, the rate of pay, and a great many other subjects.

Gratian, whose eight questions we shall now note, agrees with Isidore that recourse to arms is only justifiable by way of repelling injury and also for exacting punishment. The questions and answers in the Twenty-third Causa are:

Question 1.—Is it a sin to be a soldier? No: "Valour is the gift of GOD, but must be used in accordance with His will." Faith must be kept, even with an enemy. War may be tarnished, when, in the words of Augustine, "Nocendi cupiditas ulciscendi crudelitas, impactus absque implacabilis animus, feritas rebellandi, libido dominandi et si qua similia, haec sunt quae in bellis jure culpantur."

Question 2.—*Quod bellum sit justum?* The reply is that war is just when waged by proper command—*ex edicto*—for the recovery of property or for repelling enemies. And here is introduced a passage from the history of the Israelites,[1] who were refused "innocent passage" by the Amorites, and thus arose a just cause of war.

Question 3 is whether injury to allies may be repelled by force? Arms may be taken up in defence of allies, according to Augustine, Ambrose, various popes, the Council of Carthage, and the *Decretum*. He who is able and fails to check the wrong-doer is an accomplice, but no vengeance is to be exacted. Evil is to be borne for the sake of peace, providing that no consent to that evil appear.[2]

Question 4.—Is vengeance to be exacted? Discipline is necessary for the good of the Church, but correction

[1] Num. xxi. 21.

[2] Augustine, *De verbis Domini*, 18.

must be dictated by charity. *Mali sunt prohibendi a malo et cogendi ad bonum.*[1]

Questions 5, 6, 7, and 8 need not be enumerated here. These questions and answers in the Canon Law were brought into being by the fact that certain bishops had waged war on heretical members of the Church and had used stratagems and violence which called for the above ruling. This Twenty-third Causa, together with the title "De homicidio" in the sixth book of the *Decretals*, became the nucleus around which the glossators, especially Pope Innocent IV, Hostiensis, and other Canonists "spun a web of fine distinctions", which at last amounted to a considerable body of law. Hostiensis[2] distinguishes seven species of war; four of which are just, and three unjust.

Romanum—Christians against Infidels.

Judicale—Christians against Christians under authority of a judge.

Presumptuosum—Christians against Christians in contempt of judicial authority.

Licitum—Christians against Christians waged by authority of law.

Temerarium—Christians against Christians against legal authority.

Voluntarium—Christians against Christians attacking by their own authority.

Necessarium—Christians fighting unwillingly in self-defence.

[1] Augustine, *Ad Donat. Epist.*, 204.

[2] *Summa Hostiensis*, l. i, "De Treuga et Pace Rub.", 39, quoted by Walker.

St. Thomas Aquinas, second to Augustine in influence, in his work *Secunda Secundae*, quest. 57, says that war may be just if:

1. Waged by authority of rightful prince.
2. With a just cause.
3. *Recta intentio*—for good to ensue.

He further asserts that stratagem is permissible providing there is no perfidy. Deception by word is wrong; but by act it is not wrong. In other words, non-disclosure of purpose is legitimate. It may be remarked that this is practically the doctrine held by civilized nations to-day. A great deal might be written about the contribution of the Canonists to the subject of war, but it is sufficient to sum up by saying that the notion which prevailed was that war is legitimate, but must be guarded by all possible means. We shall now proceed to show how that the Church was, in spite of the passions and greed of men, continually striving to ameliorate the brutality and suffering of international conflict. In the first place war was not to be glorified. Those in Holy Orders were absolutely forbidden to take up arms. This runs right through the Canon Law.

Canon 8 of the Council of Toledo, 400, says that one who after baptism becomes a soldier, cannot, if admitted to Holy Orders, rise to the diaconate. Much the same had been decreed at the Councils of Rome in 386 and 390.

According to the Apostolic Canons of St. Basil (*c.* 13), war was regarded in the light of quasi-murder, and after such conflict those taking part were to be excluded from the Church for three years.

Canon 45 of the Council of Toledo, 633, decrees that a clerk voluntarily taking up arms is to be degraded and put into a monastery.

At the Council of Rome, 1081, it was laid down that, search for precedents having been made, it was not lawful to expend the property of the Church for war, but only for the support of the poor, the administration of Divine Service, and the redemption of slaves.

The Council of Westminster, 1268, Canon 4, says that the Holy Synod abominating the enormities of those clergymen who, forgetting GOD and their own credit, dare to bear arms and to associate themselves with highwaymen and robbers and share in their plunder, ordains that all clerks bearing arms be *ipso facto* excommunicated, and failing to give satisfaction shall be deprived of all preferment.

The Council of Toledo, 1473, Canon 15, forbids ecclesiastics to furnish soldiers to any temporal lord, except the king, or to accept land on condition of so doing. Furthermore, war was to be only a means to an end—peace: therefore the object was not destruction but the enforcing of just demands.

Ayala, writing in 1581, after quoting much from Augustine, says:

"There are laws of war just as much as of peace. The use of force against those who will not submit to fair demands or will not be restrained by reason, is not an injustice." [1]

But it is not to be undertaken by private persons. It can only be waged

"under the authority and warrant of a sovereign prince."

[1] *De Jure et Officiis Bell: et Discipl. milit.*, l. i, c. 2.

Not only does he limit it to lawful combat, but life is to be spared when possible. Quoting St. Augustine as his authority, he says:

"For just as violence is the lot of those who fight and resist, so, after victory, mercy is at once the prisoner's due."

Reprisals are to be restricted and safeguarded.

"Wherefore," says Ayala, "if I err not, it is clear that hostage-taking of this description is lawful, as is declared by common consent from Augustine, not, however, to the bodily harm of the innocent, who are not chargeable to any wrong-doing, but it is restricted to goods." [1]

Before proceeding to enumerate and investigate the means whereby war was made more humane, it should be remarked that the doctrine of non-intervention has never formed part of the Canon Law. Two interesting quotations will show this.

Canon 3 of the Council of Arles, A.D. 314, says:

"Those who throw away their arms in battle, shall be excommunicated."

In the last century the Sixty-second Proposition of Pius IX, in the *Syllabus of Errors*, says:

"The principle styled 'non-intervention' is one to be condemned, because the strong should help the weak, when unjustly attacked."

The views of St. Augustine had triumphed over those of Tertullian and his followers.

The Middle Ages, like most periods of history, reveal the conflict of ideals with expediency. Nevertheless, it can be clearly demonstrated that the great force behind

[1] *De Jure et Officiis Bell: et Discipl. milit.*, l. i, c. 4.

that part of international reform known as *temperamenta belli*, was Christian opinion. This will be dealt with under ten sections. Tournaments and duels were forbidden, arms were to be restricted, and those which inflicted very great suffering were condemned. Women were to receive special courtesy, and non-combatants were to be treated as civilians and not soldiers. Certain places and certain times were immune from warfare's encroachment. Chivalry was destined to bring a new morality into conflict, and, in the midst of this great desire to raise the standard of humanity, we shall trace the beginning of the work of the "Red Cross". Piracy and slavery will be dealt with later.

Tournaments

Whilst it is admittedly true that these combats were not international (when they formed part of the national sports), nevertheless they had an important bearing on warfare in general. Tournaments were specifically forbidden under pain of censure, by the following Councils and canons:

Canon 14 of the Lateran Council in the year 1139, and again in 1179 by Canon 21.

At the Council of Rheims, 1131, under Innocent II, when priests were present from France, Spain, England, and Germany, besides the King and Queen and nearly all the nobility of France, one of the canons published was that which forbids the risking of life and limb at tournaments. Another Council held in the same place seventeen years later issued the same prohibition in Canon 3. These tournaments had become so prevalent

in Germany that a Council was held at Halle in 1176, in the ecclesiastical province of Magdeburg by the Metropolitan. The immediate object before the Council was the case of a nobleman called Conrad, who had died in consequence of wounds received in such a combat. It was decided that Christian burial should be refused to his body unless clear proof of his penitence could be given, and in addition this would not be granted unless all the lords who implored this rite for his body would take oath to abstain in future from all tourneys, and discourage their dependents in the same.

It must not, however, be forgotten that the tournament served in the sphere of legal process, as well as that of sport.

"Judicial combat", although a recognized system, and doubtless an advance on the ancient "blood-feud", was opposed by, and finally abandoned by, the influence of the Church. As early as the year 855 a Council was held at Valence, under the order of the Emperor Lothaire, bishops and Metropolitans from the provinces of Lyons, Vienne, and Arles being present, at which Canon 12 was decreed, forbidding under pain of excommunication the single combat to which accused persons had recourse in those days in order to prove their innocence. It directs that he who shall kill or wound his adversary, shall be treated as a murderer and excommunicated, and that the man killed shall be regarded as a suicide and forbidden Christian burial.

The words of Hastings Rashdall are worth quoting:

"It is only when we turn to the indirect influence of the Canon Law upon the practice and procedure of the secular courts,

and even upon the substance of the secular law in the less Romanized parts of Europe, that we must recognize in the Canon Law the great civilizing and humanizing influences of the later Middle Ages. It was chiefly through the Canon Law that the Civil Law transformed the jurisprudence of nearly the whole Continent of Europe. We have to take ourselves back to a state of society in which a judicial trial was a trial by tournament, and the ordeal an approved substitute for evidence, to realize what civilization owes to the Canon Law and the Canonists, with their elaborate system of written law, their judicial evidence, and their written procedure.

"From this point of view, the diffusion of Canon Law throughout Europe represents a very important stage in the triumph of mind over brute force." [1]

It may here be noted, although not part of this section of our subject, that "ordeal" was forbidden by, and did not survive, the condemnation of the Lateran Council of 1215. From the tournament let us turn our attention to the "duel", another form of private warfare. This also came under the condemnation of the Church Councils. Canon 15 of the Council of Paris, 1213, forbade the bishops to allow it.

At the Council of Toledo held in 1473, Canon 20 was decreed which directs that persons dying of wounds received in duels shall not be allowed Christian burial, even though they may have received the sacrament of penance before death; and Canon 28 provides that this decree shall be published in diocesan synods and Cathedral Churches.

At the Council of Trent, 1545, it was forbidden in language which was far from being ambiguous. At the Twenty-fifth Session, it was decreed that duelling is forbidden, and Emperors and Kings who allow it in their

[1] *Medieval Universities*, vol. i, p. 142.

States are to be *eo facto* excommunicated or interdicted. Sponsors are to be excommunicated also, and the plea of "immemorial custom" is not to be allowed. It was also forbidden by other Councils. Nor did the Church stand alone in this work. Monarchs began to realize that this form of private warfare was a hindrance to peace. The best monarchs of Europe endeavoured to prevent this warlike practice. St. Louis substituted evidence and written proofs. His "ordonnance" was confirmed in 1303 by Philippe le Bel. Charles IX declared duelling to be high treason; Henry IV made the penalty for breach of the rule death, and appointed the Mareschals of France to decide upon particular cases. This was confirmed in 1626 by Louis XIII, under whose reign the Counts Montmorenci, Bouville, and Deschapelles were found guilty and executed by a sentence of Parliament. The next Louis published his "code", which pursued other measures. By this law, the seconds as well as the principals were punished by death and forfeiture of nobility. This was confirmed by Louis XV. May we not see here the influence of the Council of Trent?

Ayala says:

"The practice of duelling has, with complete justification, been forbidden by the Canon Law as a detestable invention of the devil, and, with a view to its utter abolition, various censures and penalties have been ordained, not only against the combatants themselves, but also against those who initiate or counsel, or are even present at, the combat."[1]

He points out, however, that this does not refer to agreed combat by representatives instead of declared and open war with armies, but only to private war.

[1] *De Jure Off. Bell.*, c, 3, s. 1.

After Charles of Anjou and Pedro of Tarragona had been warring for a long while about Sicily, they agreed, "with the approval of the Pope (Martin)", to decide the dispute by single combat.

Arms

The first restriction in this direction concerned the clergy. The following canons prohibited the clergy from carrying arms:

Canon 5 of the Council of Macon, 581, prescribed thirty days' imprisonment with bread and water for the offence.

It was forbidden by Canon 16 of the Council of Verberie in the year 753.

Canon 10 of the Council of Poitiers, 1078, decreed excommunication.

In the twelfth century two councils were held in Westminster, 1138 and 1175, with much the same decrees, while again later, two councils were held in Ravenna, 1286 (Canon 3) and 1314 (Canon 10), with the same prohibitions. At the Council of Rouen in 1299 Canon 1 was decreed, forbidding the clergy to carry swords; and those who disobeyed were to lose a year's revenue of their benefices.

By the Council of Orleans, 583, it was forbidden "to hear Mass armed" (Canon 29). This apparently refers also to the laity. We now come to a definite enactment of an international character forbidding certain instruments of war. The cross-bow was the chief weapon of the foot soldier. It was really an ingenious and scien-

tific instrument, and during the Middle Ages it was a deadly one. It could pierce metal at a distance. It was described by Anna Comnena [1] as "a real devilish weapon". The *Decretals* of Gregory IX contain the anathema which was put upon its use by the Lateran Council in 1139.

"Artem autem illam mortiferam et DEO odibilem ballistrariorum et sagittariorum adversus Christianos et Catholicos exerceri de cetero sub anathemate prohibemus." [2]

According to Scheller's Lexicon, "Ballistra" was a kind of large engine in use among the Romans for discharging stones in besieging a town. Arrows were also used as ammunition by this machine.

The anathema was not without effect, for many princes ceased to give the cross-bow to their soldiers, and Richard's death (Richard I of England) was regarded by a large part of Europe as a divine judgment, for Richard had revived its use and died through its instrumentality.

Another restriction is seen in regard to the Infidel. In the ancient Bull, "In Coena Domini", section 7 says:

"We excommunicate and anathematize: . . . all those who supply or convey to the Saracens, Turks, and other enemies and foes of the Christian name . . . horses, arms, iron, iron-wire, tin, steel, and every other kind of metal, and war engines, timber, hemp, ropes, whether hempen or of any other material, and that material itself, and other like articles with which they make war upon Christians and Catholics . . . and likewise those who by themselves or others, give information of matters affecting the state of the Christian Commonwealth, to Turks, etc. . . . and those who in any way whatever aid, counsel, or abet them to that end."

[1] Daughter of the Emperor Alexius Comnenus I, born A.D. 1083. Wrote a history of the First Crusade.

[2] *Lib.*, l. 5, t. 15, c. 1.

Then follows a statement that no privileges are to be claimed over the above decrees by any persons, princes, or States.

The third Lateran Council, 1179, Canon 24, forbids Christians to furnish Saracens with materials for building their galleys.

In the *Decretals*,[1] it reads:

"Ita quorundam animos occupavit saeva cupiditas ut qui gloriantur nomine Christiano Saracenis arma, ferrum, et ligamina deferent galearum." . . . All such are "excommunicandi."

The Canon Law influence is seen later in the work of Grotius, where he says:

"Verum est dictum . . . in hostium esse partibus qui ad bellum necessaria hosti administrat."[2]

At the Council of Toulouse, 1229, Canon 42 was decreed, forbidding women possessed of castles and other fortified places to marry men who were enemies to the faith and to peace.

The substance of these decrees was, of course, truly Medieval, but they did much in their age and generation to curb brutality, and at least paved the way for such humane laws of modern times as the Declaration of 1868 against certain explosive projectiles and other forbidden means of warfare.

Women and Non-Combatants

If an epidemic cannot be entirely stamped out, it should at least be confined to as small a circle as possible. The

[1] L. 5, t. 6, c. 6.

[2] L. 1, c. i. v. 1.

Medieval Church did not adopt the position of the pacifist, but it did endeavour to limit in all possible ways the sphere in which the scourge of war was operating; and it was no small contribution to that end, which the Church gave by its Canon Law, when it insisted on the distinction between those who bear arms and "Non-Combatants".

The value of this distinction is readily admitted. The question for discussion is, when and where did it arise?

An authority has told us that,

> "till the distinction between combatants and non-combatants was clearly and definitely embodied in the laws of war in the latter half of the seventeenth century, the unarmed inhabitants of an invaded country were exposed to shameful indignities, and sometimes even to slaughter, though in Christian Europe it was not considered right to reduce them to slavery".[1]

The same writer then proceeds to say that a gradual change had come over Europe from that time when every indignity from robbery to death had been inflicted upon the unarmed. Can we trace the steps in that change, and to what influence were they due?

At the Council of Clermont, in 1095, under Pope Urban II, at the head of thirteen archbishops and many others, where the First Crusade was set on foot, certain canons concerning international war and peace were decreed. The far-reaching effect of these decrees cannot easily be exaggerated. It may be noted that one of the causes of this Crusade was that wrongs had been done to Christian women pilgrims in Palestine.[2]

It was thus decreed in Canon 1 that women, priests,

[1] Lawrence, *Principles of International Law*, p. 414.
[2] Cox, *The Crusades*, p. 26.

and unarmed agriculturists were to be treated as non-combatants and allowed to remain in peace. The first part of the canon "De pace non infrigenda" is as follows:

"Statutum est ut in omni die, et monachi et clerici et feminae, et quae cum eis fuerit, in pace permaneant . . ."

The note on this canon given in the Latin work of Johannes Dominicus Mansi adds that it should be observed that the "Peace" and the "Treuga" stopped private warfare, and by the same enactments all clerics, foreigners, merchants, agriculturists with their plowing oxen, mills, all ladies with their unarmed companions, all women, and the property of clerics and monks were to enjoy immunity from the ravages of war at all times and not only as in the case of others under the Treuga, on certain days. Furthermore, the bishops and counts were to punish those who violate these peace laws, and should those in authority cease from pursuing the offenders, then they themselves were to be excommunicated and interdicted.[1]

Canon 2 of the Council of Roan in Normandy asserts the same principle with some added details. All churches and their courtyards, all clerics and nuns, all women,

[1] "Observandum vero pacem et treugam dici hanc a bellis privatis feriationem, quod ratione clericorum omnium, peregrinorum, mercatorum, agricolarum cum bobus aratoriis, dominarum cum sociis suis inermibus, mulierum omnium, rerum ad clericos monachosque pertinentium et molendinorum, pax ista omni tempore indulta esset, ratione ceterorum, treuga tantum, id est induciae aliquot dierum. Sane fatendum est excommunicatione mulctatos fuisse pacis et treugae violatores et ad resarciendum damnum laeso coactos: sed episcopi et comitis haec erat cognitio, ceterorumque baronum, qui tamen si cessarent a persequendo armis raptore, excommunicationibus et interdictis ad officium quo se obstrinxerant adigebantur." (*Amplissma Collectio Sacrorum Conciliorum*, vol. xx, p. 886.)

and foreigners, and merchants with their servants, plowing oxen and horses and the men who drive and attend to the carts, all property of "religious persons", and the money of the clergy were to remain in perpetual peace. At no time should any man dare to attack, plunder, or imprison, or hinder them in any way.[1]

At the Council of London held by the Bishop of Winchester in 1143, Canon 2 declares that the plough and the husbandman in the field should enjoy the same protection as if they were on Church ground. Thus the principle that innocent or unarmed persons ought not to be killed was definitely asserted in the canon "De Treuga", and incorporated in the *Decretals* of Gregory.[2] Franciscus a Victoria, in the sixteenth century, states the same law when he tells us that it is never lawful to kill unarmed persons, because even in warfare against the Turks, infants and women were immune; and among Christians, agriculturists were regarded as non-combatants.[3]

W. E. Hall tells us that these laws of mercy were far in

[1] "Statuit etiam ut omnes ecclesiae et atria earum, et monachi, et clerici et sanctimoniales, et feminae, et peregrini, et mercatores et famuli eorum, et boves et equi arantes, et homines carrucas ducentes, et herceatores, et equi de quibus herceant, et homines ad carrucas fugientes, et omnes terrae sanctorum, et pecuniae clericorum, pertetua sint in pace: ut in nulla die aliquis audeat eos adsalire, vel capere, vel praedari, vel aliquo modo impedire." (Canon 2, "Concilium Rotomagense", A.D. 1096, *vide* Mansi, vol. xx, p. 923.)

[2] Bk. I, t. 34, c. 2.

[3] "Nunquam licet per se et ex intentione interficere innocentem . . . sequitur quod etiam in bello contra Torcos non licet interficere infantes. Imo nec foeminas inter infideles . . . imo idem videtur judicium de innoxiis agricolis apud Christianos, imo de alia gente togata et pacifica, quia omnes praesumuntur innocentes nisi contrarium constaret." (*Relect. Theol.*, vi.)

advance of the habits of the time,[1] and instances the case of the Thirty Years' War, but this illustration is hardly fair, seeing that it concerns a period when the authority of the Pope had been largely set aside. Nevertheless, it remains a fact that it is in the Canon Law where we find the beginning of that law of mercy, and that, by the eighteenth century, Bynkershoek[2] stands alone in contesting it. Furthermore, from the time of Grotius,[3] who only restates the Canon Law, there is a steady growth in opinion and practice. Pufendorf,[4] in echoing the doctrine of Grotius, spoke to a world already convinced. It can hardly be doubted that Chivalry, which will be discussed presently, had an enormous effect in protecting the unarmed and women. There is the instance of Beaumanci the Breton, who charged Richard Bembrow, an English officer, in 1350, with conduct unfitting so valiant a knight, because the latter had acted contrary to the laws of Chivalry, for, in ravaging the country, he had attacked others than those who were armed.

Grotius, writing in the seventeenth century, says that it is contrary to all Christian nations to violate women in warfare, but only contrary to the best of heathen nations, not all of them.

"jus gentium, non omnium, sed meliorum."[5]

In the Bull "Ad Apostolicae", by which Emperor

[1] Hall, *International Law*, p. 395.
[2] *Quaest. Jur. Pub.*, l. i, c. i.
[3] *De Jure Belli ac Pacis*, b. 3, c. 11.
[4] *Law of Nature and Nations*. Bk. VIII, c. 6, s. 7, quoted by Hall, whose note see, *International Law*, p. 395.
[5] *De Jure Belli ac Pacis*, l. 3, c. 7, s. 9.

Frederic II was deposed, Pope Innocent IV gives as one of the reasons the fact that the Emperor had entered into negotiations with the Saracens and carried on a criminal intercourse with Saracen women.

In the Middle Ages the Church was the champion of womanhood, when her position was none too safe, and her great place of protection was the cloister.

Chivalry

Chivalry introduced into the world what may truly be called the first international army with an international code. Feudalism by its very nature gave scope for warlike occupations and even warlike amusements. The earliest literature of feudal times extols not only bravery and endurance, but also brigandage was at least condoned by it, and shows how brutally war was waged as almost the only ideal of the early chevalier. To some extent it unfortunately survived, but a glance at the history of Chivalry will reveal a remarkable change for the good. It is impossible to mark the time when Chivalry actually became an international and living system, but it cannot be traced earlier than that point at which it came under the direct influence, if not control, of the Church. "The key of the arch was wanting, and religion alone could furnish it."

"If we examine the records of Chivalry and the history of Europe from the commencement of that institution, we shall meet with convincing and indeed effective proof that the Catholic faith was the very basis of the character which belonged to the knight, that piety was to be the rule and motive of his actions and the sources of every virtue which

his conduct was to display. . . . The first precept was the love of GOD." [1]

The Church was striving to curb the brutality of war, and if she could not absolutely control the sword, then the next best thing was to insist that it should only be used in a just cause, and under a strict code of honour. That this was the ideal is shown in the mottoes which were used by the ancient families. Thus the family of Seymour, Duke of Somerset, bear for their motto, *Foy pour devoir*; the Barons de la Zouch, *Pro DEO et Ecclesia*; the Dukes of Roxburgh, *Pro Christo et Patria dulce periculum*; Edwardes, Barons of Kensington, *Gardez la Foy*. The change in manners all over Europe after the introduction of Chivalry, say, from the tenth century, was very marked, in spite of occasional lapses into barbarity.

"A new world of principles and objects was introduced by it."

The Church's power was recognized in the "blessing of the sword". Henceforth the sword was only to be used in justice and honour. Its handle was the emblem of the Cross. When this priestly blessing was first introduced we cannot tell, but in the time of Edward the Confessor we read of the story of Hereward, a very noble Anglo-Saxon youth who was knighted by the Abbot of Peterborough. In virtue of this blessing, Chivalry assumed a religious character; it was an Order, a holy Order. The initiation service was essentially religious. The details are too many to be noted here, but it will suffice to mention that the prospective knight had to make con-

[1] Digby, *Broadstone of Honour*, p. 25.

fession, keep a night's vigil of prayer in the church and fast. Then followed the symbolical bath and the investiture with the white robe and the special blessing, the *Pontificale Romanum*, and the blessing of the sword on the altar. It must be remembered that these knights formed the heavy cavalry of the Middle Ages, and were the chief and most effective military force of that period. The importance of the vows taken by these ecclesiastical soldiers altered the methods of warfare. Hitherto nothing had been recognized but brute force, in so far as the State was concerned; but now "Brotherhood", honour, and unity become factors of international importance.

At the Council of Clermont, which authorized the First Crusade, it was decreed that every person of noble birth on attaining twelve years of age should take solemn oath before the bishop of the diocese to defend to the uttermost the oppressed, the widows, and orphans; that women of noble birth, both married and unmarried, should enjoy special care; that nothing should be wanting in order to render travelling safe, and destroy the evils of tyranny.

"In this decree, all the humanities of Chivalry were sanctioned by the Church."

It may be objected that theory and practice did not always walk hand-in-hand among the Crusaders. The same objection holds good to-day, but we do not lessen our respect for international law on that account. A knight would stain his honour were he to assault a woman or an unarmed man, or break his oath. The keeping of faith forms a strange contrast with Virgil's dictum:

"Dolus an virtus, quis in hoste requirat?"

Considering the enmity which existed between the Crusaders and the Jews, it is rather remarkable to find that at the Council of Tours in 1236 Canon 1 forbade the Crusaders or other Christians to kill or injure the Jews, or to plunder or ill-use them in any way.

The punishment for the knight who tarnished his honour was worse even than death. The offender had to stand on the scaffold in a public place, whilst his military arms were taken away, broken and trampled under foot, and priests, in the presence of the monarch, heralds, and other great men recited the vigils of the dead. The one-time knight was then lowered down from the scaffold by cords, in degradation. It was the death of his honour, to be regarded as far more awful than physical destruction. Renaud de Chatillon, Grand Master of the Templars, refused life upon condition of apostasy, and was beheaded by the hand of Saladin.

Chivalrous characters have doubtless been in the world before the introduction of Christianity, but only since this era can we find any trace of an international character as displayed by the order of knighthood. "There is no analogy between the knights of Chivalry and the 'equites' of Rome. The latter were conditional upon wealth, but the former on character." Neither can we trace this humane spirit to the advance in the times, for Bynkershoek, although a great legal authority, writing in the eighteenth century, says in regard to an enemy:

"You make war because you think that your enemy, on account of the injury which he has done to you, has deserved the destruction of himself and his subjects; and that being your object, what does it matter how you attain it? You may

therefore kill him when he is unarmed, or hire an assassin to do so, poison him or make a slave of him." [1]

Let it be remembered that this was not an uninformed or irresponsible writer, and that it was written, not in the "Dark Ages", but at the beginning of the eighteenth century!

Chivalry was essentially religious, as it has been pointed out, but it is surely a very one-sided view which sees in it only a form of ritual. It had very practical and far-reaching effects.

It was the principle of fraternity, which Christianity inculcates. The "Brotherhood of Knights" is seen in the year 1320, when Philip of Valois, having led an army into Italy to the assistance of the Guelphs, was opposed and reduced to great straits by Galeas Visconti, who supported the opposite party. But in consequence of the demands of knighthood, Galeas generously proposed negotiation, which was accepted. Knights of the same Order could never fight against one another without the permission of the Sovereign. Hence, particular monarchs entered into alliances by being Companions of the same Order. Thus the life of Marshal de Gie was saved by the King of France, after that monarch had condemned him to death.

Knights passing through different countries, would come into contact with one another, not as strangers, but as brethren, and would form as it were a kind of league of peace.

It would be folly to over-rate this influence on peace and good-will, and it cannot be denied that in later times these Orders fell on evil days; nevertheless, there are

[1] *Quest. Juris Publici*, l. i, c. i.

historical instances to prove that the contribution to the subject of *temperamenta belli* was truly great. The influence upon the Barons, who were always a menace to peace, was remarkable. It grafted a Christian nobility on to a military power.

The generous treatment of William Rufus towards many of his enemies has called forth the following remark from Ward:

"Rufus possessed all the barbarity of his time, but as a knight he was equal to the most courteous." [1]

Instances might be adduced from the life of Edward III, in his conduct towards Ribbemont, a French nobleman. When Caen fell into the hands of Edward, "Sir Thomas Holland preserved ladies, damsels, and nuns from outrage worse than death".

The life of the Black Prince was spent almost entirely in acts of bravery and courtesy; whilst Tancred the Crusader was renowned, not so much for his wealth, or the greatness of his following, but from those qualities of mind and person which brought him near to the standard of Chaucer's "very gentle, perfect knight".[2] Froissart shows that in 1344, when the English were at war with France,

"the English dealt like good companions with their prisoners, and suffered many to depart on their oaths and promises to return again at a certain day to Bergerac or to Bordeaux."[3]

The same thing can be said of the Scots in their treatment of the English at the Battle of Otterburn; but a rather

[1] Vol. ii, p. 162. [2] *Ibid.*, p. 165. [3] Bk. II, c. 145.

quaint instance may be quoted from Gibbon, in closing this section. He relates how in the wars of the Guelphs and the Ghibellines, the Emperor Conrad, as an outraged and offended sovereign, had refused all terms of capitulation to the garrison of Winnisburg, but, as a true knight, he permitted the women to depart with such of their valuable effects as they could themselves carry. The town gates were opened wide to allow a long procession of matrons, each carrying a husband, or brother, or father on her shoulders, and so pass to safety through the applauding camp! [1]

We now turn to the immunity from war of certain places and times.

Sanctuary [2]

We are dealing with only the beginning of international peace, and in this connection the law of Sanctuary helped in two ways.

First, it afforded the means of arbitration rather than the blood-feud.

Second, it curtailed private war.

As early as the Council of Orange, Canon 5, 441, forbids anyone to deliver up one who has taken refuge in a church. Therefore the churches are not to be fortified as places of defence (Council of Valladolid, Canon 17, 1332). In 511 the Council of Orleans, Canon 1,

[1] *Antiquities of the House of Brunswick*, vol. iii.

[2] The principle of "Asylum" can be traced in the history of ancient Greece and Rome, but it would appear that it originated with the Children of Israel in their "Cities of Refuge" (Num. xxxv).

extended this inviolability to the bishops' houses, which, according to the decrees of the Council of Meaux in 845, had become the resting-places of kings and great men whilst on their journeys.

There was a further extension, given by the Council of Clermont, in 1095, by Canons 29 and 30, which accord the same safety to those who take refuge at a cross, as was given by the church.

A further extension still was granted by the Council of London, 1143, where Canon 2 declared that the plough and husbandman in the field are to enjoy the same peace as if they were in a churchyard. The penalty for those who violated this sanctuary was decreed in many Councils.

The Council of Westminster, 1268, Canon 6 decrees that if anyone shall by violence, directly or indirectly, drag away one who has taken refuge at a church, churchyard, or cloister, or prohibit him from needful food, or carry away what has been placed there for him, shall be *ipso facto* excommunicated, and unless satisfaction be made within the time appointed by the bishop, his lands shall be laid under an interdict. The Council of Senlis, 1326, says much the same and the Council of Lambeth, 1261, makes the offence a sacrilege, and forbids laymen to set guards over such places. The civil penalty for sacrilege was often death.

"Truce of God"

Under the title of the "Truce of God," two distinct measures were incorporated. The first, known as the

Pax Dei or *Pax Ecclesiae*, dates from the year 990, when it was decreed at three synods held in different parts of Southern and Central France—at Charroux, Narbonne, and Puy—that every act of private warfare or violence against ecclesiastical buildings, and certain persons, such as clerics, pilgrims, merchants, women and peasants, and against cattle and agricultural implements, was to be punished by "excommunication."

The second limitation on acts of violence, introduced by the Church was known as the "Treve de DIEU" or "Treuga DEI."

By this enactment all private war was forbidden from noon on Saturday till the hour of prime on Monday. The fearful confusion introduced by the civil wars which raged at the beginning of the eleventh century compelled the bishops to curtail acts of hostility. This is found to be introduced for the first time at the Council of Elne, in the Pyrenees, in 1027, and later at Bourges, 1038. During these days of the week no man was to take anything by force or avenge an injury. This decree soon spread over France. The Synod of Therouanne, 1063, introduced it into Flanders. It found its way into Italy in 1089, into Germany in 1082, and was made universal in that country by the Council of Mainz in 1085. At the Council of Rheims, 1157, we find that by Canon 3 the time is extended to the period between Wednesday evening and Monday morning. Also in most places, the Treve de DIEU was held to be in force on the three great vigils and feasts of the Blessed Virgin Mary, those of the Apostles and other Saints, besides the seasons of Lent and Advent. Thus scarcely more than one quarter of the year was left

for hostilities. At the Council of Gaul in 1041 the penalty for disobedience was to be a money payment equal to that of a capital crime, or excommunication and banishment. At the Council of Limoges in 1031 the bishop made complaint against the great men and the military in his diocese, whereupon the Council established the Treve de DIEU, and pronounced the following sentence against any who should not recognize it.

"Cursed be they and their abettors: cursed be their arms and their horses: may they be with Cain the murderer of his brother, with Judas the traitor, and with Dathan and Abiram who went down alive into hell . . . unless before their death they make satisfaction and due penance."

This "Peace" was ratified by the following Councils: Lillebonne, 1080; Clermont, 1095; Rouen, the following year; Troies, 1107; Lateran, 1139, and again in 1179.

In regard to England, "An allegation of a breach of the 'peace of GOD' became a common form in the pleadings of the thirteenth century. . . . The peace of GOD was then conceived as existing always and everywhere."[1]

Furthermore, the eleventh century saw several "Leagues of Peace", which contributed in some measure to this subject.

In 1027, an "Association" was formed between the Bishop of Helena in Roussilou, his canons, clergy, and body of his vassals, men and their women, by which peace and honesty were to be observed and robbery and incendiarism were forbidden.

In 1045 there was a "League" between the Archbishop of Narbonne and the Count of Roussilou, and the other

[1] Pollock and Maitland, *History of English Law*, vol. i, p. 76.

nobility, for keeping the "Truce of God." "The Brotherhood of God" was another league said to have been instituted by a carpenter of Puy in Auvergne, through a vision of the Blessed Virgin Mary. It was a league for general peace. Bishops and all men of rank flocked to it, and it served to keep alive the ideal of peace; but it finally disappeared.

The Red Cross

Article 6 of the Geneva Convention, 1864, declares that,

"wounded or sick soldiers shall be entertained and taken care of, to whatever nation they belong."

It took eighteen hundred years to make this an international statute: but long before this, forces were at work to prepare the way and make such possible. The test of a true Christian was given to us by our Lord in the following words:

"I was sick, and ye visited me: I was in prison, and ye came to me." [1]

In the middle of the second century Justin Martyr [2] tells how, after Sunday service, a collection is made, of which the president is custodian, and is used for the benefit of the widows, orphans, *sick*, *prisoners*, *and strangers*.

Canon 70 of the Council of Nicea, A.D. 325, gave directions for the establishment of hospitals; whereas in 451 the Council of Chalcedon mentions the fact that

[1] St. Matt. xxv. 36.

[2] *Apologia*, i. 67.

chaplains are attached to these hospitals. It has been said that "not the least of the debts which the world owes to the fourth century Christianity is the invention of open hospitals to relieve the wants of every class and every age, and not merely those of citizens, as had been the case in heathen Rome and Athens".[1] From the earliest times the Monasteries and Canonical foundations had their hospitals for the sick and poor, and a very great impetus was given to this movement by the Orders of the Cluniacs and Cistercians: but the international basis of this work was effected by the Crusaders. Pope Urban II had charged the Crusaders thus:

"You are the soldiers of the Cross: wear them on your breasts, or on your shoulders, the blood-red sign of Him Who died for the salvation of your souls."

From that time there appear special Brotherhoods solely for the purpose of providing hospitals. It Italy there were the "Crucifers" whose original hospital in Bologna, Alexander III took under his special protection in 1160, and Urban III placed it under the Holy See in 1185. In Southern France, Guido of Montpellier founded at that place, *c.* 1170, "The Order of the Hospitallers of the Holy Spirit", which quickly spread and then planted a firm foot in Rome. Later we find lay-brothers having their own "Hospital Order", such as the Brothers of St. Anthony. This one became very famous, and they collected for their hospital from all parts of Christendom. In 1194 it acquired a house in Rome and soon afterwards one in the East.

When the Crusades brought into being the kingdom

[1] *Cambridge Medieval History*, vol. i, p. 595.

of Jerusalem, one of the monastic but fighting Orders stationed there for the defence of the Holy Land was the "Knights Hospitallers," or "Poor Brethren of the Hospital of St. John at Jerusalem", which was a kind of Medieval Red Cross organization. This influenced the later Orders. The care of pilgrims was the special duty of these knights, and their work was performed with great devotion. A German hospital had arisen under the care of King Baldwin. It is probable that the experience of the wretchedness of imprisonment taught James I of Aragon to sympathize with the helpless condition of others, and about the year 1218 he banded together several valiant knights and pious ecclesiastics in Barcelona, whose sole care should be the collecting of alms for the liberation of Christian captives in the hands of the Moors. So zealous were the Spaniards that within six years no less than four hundred captives were ransomed from Spain and Africa. There were other Hospital Orders, and their influence spread through the East as well as the West, and they were, beyond question, a great humanizing force in the midst of brutality. No instance is at hand of a Crusader nursing back to life one of the Infidel Turks, but doubtless there were very noble-spirited soldiers in the ranks even in those days, and it is quite clear that this work of mercy did have this effect that it caused different nations of Christians to pass beyond the borders of nationality in caring for the sick and dying, even though they might not be allies. Canon 18 of the Council of Lambeth, 1261, shows the international character of Christianity, where it is forbidden under pain of excommunication, to hinder anyone who desires it

from having the Sacrament administered, especially if he be a *prisoner*. Articles 1 and 2 of the Geneva Convention declare that doctors, nurses, chaplains, etc., are to be regarded as neutral. It may be pointed out that this was, in substance, decreed at the Council of Clermont in 1095 as already discussed under the subject of "Non-Combatants".

The very fact that this work of mercy is symbolized by the "Red Cross" is not without significance. It is well known that in so far as the nineteenth century is concerned, it was merely the Arms of Geneva reversed, but the work itself took its rise at a very much earlier date, as already stated, and although it may be only a coincidence that this "Red Cross" was the insignia of the Crusader, yet there can be no doubt that the British Order of St. John of Jerusalem, which has done so much for Red Cross work, can trace its origin right back to the Crusades in the Middle Ages.[1]

Slavery

Slavery was one of the cruel penalties of war, although in itself it was regarded as an advance on the law of indiscriminate slaughter. A man could, of course, become a slave from other causes than war, but war was the chief one. We shall therefore treat the subject generally. Although it is sometimes denied that Christianity was the chief cause of the abolition of slavery, yet no other cause can be definitely proved. The Eastern and the Western

[1] For a concise and interesting history of this Order, *vide Encyclopaedia Britannica*, 11th edit., vol. xxiv.

Church contributed all the mitigation of this evil that was in their power, yet they were only partially successful until later times. Nevertheless, their contribution should neither be forgotten nor denied. The Middle Ages was a time when the "most gross and cruel treatment of prisoners prevailed", and it seems that the Church either could not or at least did not proclaim the abolition of slavery, but it certainly insisted on better treatment, on the principle of the equality of all men,[1] and did much to forward emancipation of slaves and freed-men when once manumitted.

The Epistle of St. Paul to Philemon at least asserted the brotherhood of master and slave,

"No longer as a bond-servant, but as a brother beloved." [2]

The Acts of the Councils of the fourth century are full of enactments in this respect, for with the reign of Constantine there arose the custom of manumission in the Church before the bishop.

At the Council of Orleans in 511, Canon 3 declares that a runaway slave taking refuge in a church shall be given up to the master on oath being given by the owner that the slave shall not be hurt. Canon 5 orders that the revenues of any property given to any church by the prince shall be employed among other purposes for the poor and the redemption of slaves. Canon 5 of the Council of Macon, 585, orders the same thing in regard to tithe and threatens with excommunication those who disobey. Bishops and priests were forbidden to keep slaves by Canon 15 of the Council of Strigonia in Hungary.

[1] *Decretum of Ivo XVI*, 33. [2] v. 16 (R.V.).

Canon 27 of the Council of Westminster, 1102, prohibits the "selling of men like beasts" as had hitherto been done. In the same century we find similar enactments in Ireland. At the Council of Waterford in 1158 and again at the Council of Armagh in 1171, it was ordered that all English who had been kept in a state of slavery in Ireland should be set free. The Third Council of Lateran in 1179 forbade Christians to make or purchase slaves: a principle which the Eastern Church also enforced some eighty years later. It may be argued that these canons were often and widely disregarded; nevertheless they are indicative of the Church's attitude, and were not entirely without effect, for in 1582 Ayala, in discussing this subject, says that although wars between Christians may be just, yet,

"a very ancient custom prevails among Christians whereby persons captured at any time in a just war do not lose their liberty . . . prisoners taken in war between Christians are not nowadays enslaved." [1]

Suarez, writing at the beginning of the next century, gives expression to a similar opinion.

"Sic enim jus gentium de servitute captivorum in bello justo, in Ecclesia mutatum est, et inter Christianos id non servatur." [2]

Thirteen years later appeared the monumental work of Grotius, in which he says that Christendom had long ago abandoned the practice of making slaves of captives, as "directly at variance with the teaching of the Founder of their religion",[3] and remarks with evident pride that the

[1] *De Jure et Offic. Belli*, c. 4.

[2] *De Leg. ac Deo*, c. 20, s. 8, quoted by Phillimore, *Commentary*, vol. i, p. 24.

[3] *De Jure Belli*, l. iii, c. 7.

law of Christ had done that for which the teaching of Socrates had laboured in vain.

In the next century, 1737, Bynkershoek, who certainly did not err on the side of clemency, tells us that among Christians this practice had ceased.

"Sed quia ipsa servitus inter Christianos fere exolevit, ea quoque non utimur in hostes captos." [1]

By the middle of the eighteenth century Vattel could assert that the selling of prisoners as slaves was a disgrace to humanity, happily banished from Christendom. It is evident that Christianity was the one great force, stirring up the international conscience to abandon this ancient but degrading custom.

"It was not from Seneca, but from Christ and St. Paul that the Fathers took their constant theme of the essential equality of men, before which slavery cannot stand. Not only do they establish the primitive unity and dignity of man, but in Christ a road to freedom which was closed to Stoicism. They recognized his right to kneel in equality by the side of his master in the Lord's Supper." [2]

What Stoicism had taught in an abstract way, the Church put into practice. If the third-century story that a slave became Bishop of Rome is doubtful, it is nevertheless a significant fact that it was believed and accepted. Instances are not wanting of men from the lowest classes, who, in those feudal days, rose to positions of the highest ranks in the Church. The question of slavery is a big and complicated one, but from such meagre evidence as I have

[1] *Quest. Juris Publici*, l. i, c. 3.
[2] *Cambridge Medieval History*, vol. i, p. 592.

gathered here, it seems that Ward was right when he said:

"Christianity, in conformity with its principles, claims the merit of having gone farthest towards the abolition of this debasing institution." [1]

[1] Ward, *History of the Law of Nations*, vol. ii. p. 26.

THE CRUSADES

In estimating the value of any great movement, different factors must be borne in mind. Due value must be given to the motives as well as the immediate and ultimate results.

If the Crusades are viewed simply from the point of view of the avowed object and the immediate result, bearing in mind that they were organized and blessed by the Church, then it must be confessed that they were a ghastly failure, diametrically opposed to the teaching of Christ; and, as such, a devastating influence on the Church's contribution to peace. Let this be frankly acknowledged with shame. But, if we are to do justice to our subject, other considerations and aspects of the case will need investigation. There is no philosophy which can justify them according to the ideals of the twentieth century, but we are considering a Medieval movement.

What were the motives of the Crusades?

Doubtless they were mixed. It may be that some saw in them an avenue for adventure with the excitement of battle and the possibility of material gain, but the evidence on the whole is rather against this judgment, and especially in the later stages; the sufferings and disasters were not encouraging.

The point of view which sees only a selfish, secular, and sordid motive has but a very partial vision, if not entirely a misconception.[1]

[1] For a discussion of the religious motives, and the authorities bearing on this subject, *vide* Mosheim, *Institutes of Ecclesiastical History*, vol. ii, pp. 8 ff.

All war is cruel in fact and fallacious in theory. It is the cessation of reason and appeal to brute force, but it would be difficult to find any instance in the history of warfare which had a higher motive than that of the Crusades.

Looked at from the political aspect, it was merely a defensive measure for "the Muslim attacks on Southern Europe from the eighth to the eleventh centuries called forth that counter-stroke which is known as the First Crusade".[1]

But the political motive was not dominant. The mainspring of the movement was definitely religious, both in its conception and official control. No matter how mistaken its method, it aimed at an enlarged conception of Christian activity and a quickened sense of religious opportunity. It began officially with the preaching of Pope Urban II at the Council of Clermont in 1095, but we must trace the story back to previous events.

Constantine and his mother Helena, in their zeal for the faith, had built beautiful churches over the cave of Bethlehem and the sepulchre at Jerusalem, to which there flowed a constant stream of pilgrims including princes and bishops. Houses of rest and shelter were established at different stages of the journey, as well as in the Holy City. The cry had gone forth that Christian women pilgrims had been shamefully treated and the birth-place of our Lord was desecrated by Infidels. Thus it came to pass that whilst feudal lords were busily engaged in fighting for power and land, this challenge of the Church went forth, and kings were commanded to give evidence of their faith by taking up the Cross.

[1] *Cambridge Medieval History*, vol. v, p. 265.

From the time of Sylvester II, the Papacy had been alarmed at the state of the Holy City, and Gregory VII, in response to the appeal of the Asiatic Christians, had gathered an army of over fifty thousand men, whom he proposed to lead personally, but his quarrel with Henry IV compelled him to abandon the attempt.

In the year 1093 a Frenchman of Amiens, Peter, surnamed the Hermit, visited the Holy Land, and what he saw of the cruelty by the Infidels meted out to the Christian pilgrims stirred him into a religious frenzy. Travelling through Europe with an epistle to the Christian World on this very subject, purporting to have been written from heaven, he communicated his own zeal to Christian princes.

The minds of men having been thus inflamed, Urban II in the March of the year 1095 assembled a very numerous Council at Piacenza, in which he first recommended this Holy War. But his proposals did not readily recommend themselves. However, another Council was held in November of the same year at Clermont, and at this Assembly the First Crusade was set on foot. In an eloquent appeal the Pope declared that all Christendom was disgraced by the triumph and supremacy of the Muslims in the East. Eastern Churches had repeatedly pleaded for help; and the Holy Land, the rightful possession of Christendom, was profaned and enslaved by Infidel rulers. Christian kings were therefore admonished to turn their arms and energy against those enemies of God rather than against one another. It was to be a "Holy War" and "Deus Volt" its fitting battle-cry. Paradise and pardon of sin was to be the reward of those who

should fall in its enterprise. To this appeal was added the command,

"wear then on your breasts, or on your shoulders, the blood-red sign of Him Who died for the salvation of your souls. Wear it as a pledge of the vow which can never be recalled."

At the Council it was decreed that:

Private wars were to be forbidden.
"Truce of GOD" was to be observed.
Women and clergy, merchants and husbandmen were to be placed under the protection of the Church.

In response a "vast multitude of all ranks and ages became eager at once to engage in a military expedition".[1]

If further evidence of the religious motive be required it will be seen in the fact that Godfrey of Bouillon, the Commander-in-Chief, sold his small estates to provide himself with means for the conflict. If this is not convincing, it must be admitted that it was nothing short of religious enthusiasm which revealed itself in those strange and pathetic episodes known as the "Children's Crusades". In 1212 a shepherd lad from the neighbourhood of Vendôme, named Stephen, assembled a crowd of boys, peasants, workmen, and women who set out for the Holy Land, but only to be sold into Egypt as slaves. Another great company consisting of German youths from the Lower Rhine made their way to Brindisi, where the Bishop wisely ended their project.

This useless, but religious devotion of the children called forth from Innocent III the remark that

[1] Mosheim, vol. ii, p. 7.

"these children shame us. While we are asleep, they march joyously forth to conquer the Holy Land!" [1]

When Jerusalem was actually occupied and a prince to rule over that city had to be chosen, the crusading chiefs having met on the 22nd July, 1099, the distinguished post was offered to Raymond, who refused it and supported the clergy in their request for an ecclesiastical dignitary to be appointed. Finally, Godfrey of Bouillon unwillingly accepted control but only as *Advocatus Sancti Sepulcri* and not as king. If he died childless, the Patriarch of that city, who was also Papal legate, was to succeed him. When the kingdom of Jerusalem retained some verses of the Koran on its coinage, the Pope vetoed it.

However mistaken and false to the ideals of Christ, the Crusades were essentially religious wars. From a consideration of the motive, let us turn to an investigation of the immediate results.

The immediate result of the Crusades upon spiritual religion cannot be estimated fully here; its poisonous and devastating influence can only be confessed. It formed a sad background for the picture of the "Prince of Peace". A religious motive does not necessarily guarantee a service to a religious cause.

There was, however, another result which was as remarkable as it was evident. Europe was united in such a way as it had never been before. When the chief kings of Europe were open enemies of the Papacy, they united together at the call of that very authority to stand side by side in an enterprise, where their soldiers were to receive no pay, to be bound by a solemn oath to war against no

[1] Tout, p. 452.

other Christians, to lay aside their national quarrels, and to observe such laws of warfare as form a striking contrast with their earlier practice. It was a very cosmopolitan army which followed. In the Third Crusade, we find Frederic Barbarossa, King of Germany, Philip Augustus of France, and Richard of England, all joining forces together. There was probably no part of Europe which was not affected by this movement.

As to the number of those who took up the Cross, it is difficult to be sure, seeing that authorities vary. The estimates of those bearing arms in the First Crusade range between one hundred thousand and six hundred thousand.

"Never since the last Crusade has Christendom acted as a united whole, for never since has it enjoyed unity." [1]

According to another authority, "the Crusades taught new ideas even to brawling, ignorant barons. They taught the unity of Christendom: yet more, they taught the Unity of Nations".[2]

Certainly they created religious unity which added power and prestige to the Pope.

There was also an international influence being exerted in a larger sphere.

Beginning at the end of the eleventh century, the Crusades continued till the middle of the fifteenth century. During that time Europe and the East were brought into such international relationship as had probably never existed before.

G. W. Cox, after painting a fairly gloomy picture of the Crusades, says:

[1] *Cambridge Medieval History*, vol. v, p. 333. [2] Walker, p. 89.

"these enterprises have affected the Commonwealth of Europe in ways which the promoters never dreamed. . . .

"By the mere fact of throwing East and West together, they led gradually to that interchange of thought and that awakening of the human intellect to which we owe all that distinguishes our modern civilization from the religious and political systems of the Middle Ages." [1]

It can scarcely be doubted that they had an important bearing on those centuries, as almost constant streams of European armies of all nationalities poured through Europe across France and Italy and through Hungary on their way to fight the Infidel foe. Trade with the East was enormously stimulated. Missionaries, traders, adventurers penetrated to India and China, and "Asia was rediscovered two centuries before the discovery of America, and the Byzantine markets drew their supplies of Indian and Chinese goods from Central Asia, by camel caravans".

It is a significant fact that whilst Europe was being stirred by the Crusades, it was also being stirred to great social and intellectual reforms.

The Rationalism of the eighteenth century regarded the Middle Ages as a "period of static misery", but it is claimed that the nineteenth century rediscovered them, and according to Michelet and Heeren,

" 'the growth of towns all over Europe, the great increase in international trade, the development of the Universities, the decline of feudalism, the opening up of Asia, the thirteenth-century renaissance in literature, philosophy, and art' were all due to 'the stir and movement introduced into Europe by the Crusades'." [2]

[1] p. 216.

[2] E. J. Passant, *Cambridge Medieval History*, vol. v, p. 320.

But there was yet another result, which was truly consonant with the teaching and example of Christ.

Before the Crusades had ended, the most truly religious minds had come to regard them with revulsion. The brutality and fallacy of warfare had made them disgusted, with the result that Missionary work, more in the spirit of our Lord was launched.

St. Francis of Assisi reached Egypt in 1219 and preached before the Sultan, and the Franciscans as well as the Dominicans continued their preaching Missions during the early part of the thirteenth century, endeavouring to convert the Muslim world to the Christian faith.

In 1253 Pope Innocent IV formed the first Missionary Society since the conversion of the West. It was called the

"Peregrinantes propter Christum." [1]

The heroic character of Raymond Lully (1235–1315) is worthy of notice. In his thirty-second year he abandoned his licentious living, and, having disposed of the greater part of his property, gave himself up to a religious life. "The missionary call became henceforth the actuating principle in his life." Philosopher, poet, mystic, and inventor of a fantastic system of logic, he set out to convert the Mohammedans by peaceful methods. He only narrowly escaped death on more than one occasion, and finally at the age of nearly eighty visited Africa and received what was the ambition of his life—a martyr's crown.

[1] *Cambridge Medieval History*, vol. v, p. 325.

Other missionary enterprises followed. Thus began the pacific crusades.

These missionary efforts formed the reaction and revulsion against the secular methods of the Crusading movement.

The great benefits which Christian Missions have contributed towards international peace cannot be denied, but they form too large a subject for discussion here.

EXTRADITION

STRANGELY enough, extradition is probably one of the most ancient customs of International Law.

The first treaty of such, of which we have record, is one between Rameses II of Egypt and Khitasir, King of the Khita, some thirteen hundred years before Christ.[1] But the example here set was not followed to any great extent till recent times. Although extradition cannot be demanded to-day as an international right, yet there are so many treaties on the subject between most countries, that it has become a rule of comity at least that criminals should be surrendered to their own country.

There is, however, an important exception, namely, that political or religious refugees shall not be extradited. This clause is contained in most extradition treaties. Happily to-day there are few religious refugees, but it would seem that the history of the one is the history of the other. Can this exception be traced to the influence of the Church?

The *Cambridge Medieval History* says:

"Early in the fifth century peace between Rome and Persia was broken. Yezdegerd had always shown himself friendly to the Christians, but at the end of his reign the fanatical acts of a bishop drove him to severe measures. Some Christians fled to Roman territory, and when their surrender was refused, the position became so critical that permission was given to the inhabitants of exposed provinces to fortify their own lands." [2]

Thus it was that Christianity, with its religious bond,

[1] Burgsch, *Egypt and the Pharaohs*, vol. ii, p. 671, quoted by Lawrence.

[2] Vol. i, p. 464.

refused extradition on certain grounds; a law which has survived to this day.

Fleury, the French historian, tells us that,

"Les princes Chretiens ont cru de tout tems etre en droit de proteger les Chretiens etrangers opprimes par leurs souverains."

On this ground he says, Theodosius the younger refused to deliver up a Persian Christian to the King of Persia. In 1521 Pope Leo X issued a Bull, "Decet Romanum Pontificem", demanding the extradition of Martin Luther to Rome from Germany on a charge of schism. Thus the Pope was, to some extent, endeavouring to alter the ancient custom, but his request was not acceded to by the Emperor, and this custom has remained.

COMMERCE AND THE HIGH SEAS

WITH the fall of the Roman Empire, civilization and commerce disappeared. Warfare was restrained by no rules, and pirates swept the seas; but a new and better order was to emerge from this chaos. The gradual revival of commerce called into being various Codes of Maritime Law, the origin of which presents a problem which has never been solved. It is remarkable that there should exist in an age which was not conspicuous for its international unity, a number of Codes of Maritime practice which present such a uniformity of international custom that, with slight variations, the same commercial and maritime laws were operating in

"every country which borders on the Atlantic Ocean and on the North Sea, whilst the kings of Castile gave them the authority of law in their ports in the Mediterranean and the trading cities of the Baltic incorporated their provisions into their own maritime law." [1]

In these interesting documents we find, according to an authority,

"the Common Law of all commercial powers of Europe, and (speaking of the 'Consulato') the most authentic and remarkable monument extant of the commercial usages of the Middle Ages." [2]

It will be obvious that this branch of Medieval law forms a striking contrast with the Civil laws of the same period.

"The usages of Maritime Commerce, although they have been reduced into writing at very different epochs in different countries, exhibit a striking identity of character which con-

[1] Twiss, *Black Book of the Admiralty*, vol. i, p. xlvii.
[2] *Commentary on American Law*, by Chancellor Kent, vol. iii, p. 10.

trasts singularly with the great diversity which is to be observed in the civil institutions of these countries."[1]

These Medieval Codes then are remarkable for their uniformity in character and universality in sphere of operation. A detailed list of their titles and contents is neither possible nor desirable in this chapter. A collection of these Sea-laws has been edited by Sir Travers Twiss in his *monumenta juridica*, *The Black Book of the Admiralty*, and by a French writer, M. Pardessus, in his great work, *Collection de lois maritimes*. That these international customs contributed largely to the peace and well-being of the world, cannot be seriously questioned. They stand out as a monument of jurisprudence, and to such, "a considerable portion of Modern International Law, directly or indirectly, owes its origin".[2] The one question which will concern us here is their origin, and the influence, if any, of the Medieval Church upon their formation. The origin is admittedly a mystery, but it seems fairly established that, like most ancient laws, they were the result of growth. The form in which we have them to-day was not the work of an individual or a generation, but rather the codified and formulated decisions of a considerable period of custom and usage. Whilst no MS. of an earlier date than the fourteenth century is extant, it may quite safely be assumed that these laws were formulated centuries before that time.

In writing of what is probably the oldest Maritime Code,[3] it has been said that "the nationality of the Consulate of the Sea has, since the commencement of the

[1] Twiss, vol. iii, p. lxxx. [2] Risley, *Law of War*, p. 18.
[3] Pardessus (ii, 28) maintains that "Oléron" is more ancient.

seventeenth century, furnished almost as interesting a battle-field for disputants, as the nationality of the Homeric poems. Barcelona, Pisa, and Marseilles have each put forth a claim to its authorship".[1] If we turn to the *Ordinances of Trani*, we are told that it is "perplexing as regards their origin",[2] and in considering these Codes generally, it appears that "a certain manner of acting towards one another on the part of sea-faring men, when they met on the High Seas, grew up into a custom, the origin of which is hidden in the darkness of a remote antiquity".[3] We are therefore faced with two very remarkable facts. The first is that a quasi-international Code of Maritime Laws existed in the early part of the Middle Ages. The second is that all trace of their origin is missing and remains a mystery.

For our present purpose the contents of these Codes and the value of their laws will concern us, only so far as they throw light on their origin; but their important contribution to commercial peace cannot be easily estimated. The one question before us here is, what part, if any, did the Church play in their formation?

Some ameliorating influence must have been at work in an age in which piracy was carried on "under honourable appellations" [4] and when "piracy and trading went hand in hand"; [5] even up to the twelfth century.

That the Pope claimed the right of arbitration and control over the high seas as he had done over the land, will need but little proof. It is interesting to note that the

[1] Twiss, vol. iii, p. xxviii.
[2] *Ibid.*, vol. iv, p. xv.
[3] *Ibid.*, vol. ii, p. xxxix.
[4] Ward, vol. ii, p. 340.
[5] *Cambridge Medieval History*, vol. v, p. 226.

first positive convention extant, on the subject of commerce, is one in which this Papal principle appears. Canute, in the eleventh century, sought relief by treaty from Pope John and Emperor Conrad, from the heavy tolls and taxes with which travellers to Rome were burdened.

"ut eis concederitur lex aequior, et pax securior in via Romam adeundi, et ne tot clausuris per viam arcerentur, et propter injustam telonium fatigarentur."[1]

In the ancient Bull, "In Coena Domini", section 5 imposes the anathema and excommunication upon all who

"impose in their territories, new tolls or gabels, or augment the same, or exact such as are unlawfully imposed or augmented, except in cases permitted to them by the law, or by a special licence from the Apostolic See."

In 1493 Ferdinand and Isabella were confirmed in their possessions and discoveries in the New World by a Papal Bull, issued as former Bulls had been in virtue of the Pope's supremacy over the whole world, thus revealing the Pontiff's claim to jurisdiction over newly discovered territory in the high seas.

Turning to the question of the "freedom of the seas", which to-day would not, except in time of war, be seriously questioned, we find that in Medieval times it was far from unchallenged. Venice levied a tax on all ships plying the Adriatic; the Ligurian Sea was claimed by Genoa, and England asserted her claims not only over the North Sea and the English Channel, but also over the Bay of Biscay. The Baltic was shared between Denmark

[1] *William of Malmesbury*, Bk. II, c. 9, quoted by Ward, vol. ii, p. 341.

and Sweden. In spite of this, Bynkershoek asserted that our modern theory of the freedom of the seas is that supported by the Canon Law. He maintained against Gentili and Selden and the advocates of the English pretensions of sovereignty over the northern seas, that although the high seas could be occupied, in fact they had not been, and were therefore free. He claimed that occupation is the only right to possession, and supported this by quoting St. Augustine and the *Decretum* in the following words:

"This is clearly proved by St. Augustine,[1] especially in the passage over which men have toiled so hard in twisting it to other things (than the writer had in mind). Augustine was right in maintaining that ownership of property rested upon human law. . . .

"If my property is found outside of my state, and I am absent and not actually occupying it, it will pass again to the first man who occupies it . . . as Augustine puts it, 'a res in medio posita'." [2]

There is plenty of evidence to show that the Medieval Church did not consider commerce and the high seas to be outside of her jurisprudence and the Canon Law, and that it contributed much to the abolition of piracy and the "law of wreckage". Furthermore, it can be shown that ecclesiastics were not unfamiliar with nautical science, either on its theoretical or practical side.

"The Crusades had helped to familiarize the clergy with the habits of seafaring men, and incidentally with the sea. One instance may be cited in illustration of the arduous duties in matters of naval administration, which ecclesiastics of high station were induced to undertake under the religious enthu-

[1] Cap. i, causa 23, quest. 7, *Decr.* 2, 23, 7, 1.

[2] *De Dominio Maris Dissertatio*, c. i, p. 33 of translation by Magoffin.

siasm kindled by the Fourth Crusade. The Archbishop of Auch (the Primate of Aquitaine) and the Bishop of Bayonne, one of his suffragans, did not shrink from undertaking the command of King Richard's fleet and discharging the duties of chief justiciaries in naval matters, with the assistance of three nautical colleagues. Other ecclesiastics in high office might be mentioned who were distinguished in the reigns of the three Edwards as persons of authority on questions of maritime law, and who took part in its administration, and among them the three justiciaries of the king may be cited to whom Edward III in the twelfth year of his reign referred the decision of the question, as to what laws and ordinances were proper to be observed by his courts in maritime matters, and whose names are recorded in the famous Roll of 12 Edward III, in which there is the earliest mention of Le Ley Olyroun in connection with the return of Richard I from the Holy Land. It would probably sound strange to the ears of laymen in modern times if the Roll were read aloud, as it announces that the three judges who were to certify the king in Chancery on the subject of the maritime laws proper to be enforced in his courts, were Adam Murymuth, the Official of the Court of Canterbury, Richard de Chadderly, the Dean of the Arches Church of St. Mary, and Henry de Eddesworth, Canon of St. Paul's Cathedral. It was a noble tradition of law which these distinguished ecclesiastics handed down to their successors, and it was faithfully maintained by the College of Doctors of Civil Law under the shade of St. Paul's Cathedral until the Parliament of Great Britain was pleased to divest them of their trust and to transfer it to other hands." [1]

A footnote from the same authority is worthy of mention also:

"William Wrotham, Archdeacon of Taunton, had the management of the king's navy, under the title of the Keeper of the King's Ships, during the reign of King John, and Friar Thomas of the Temple was the Keeper of the King's Great Ship in Henry III's reign." [2]

[1] Twiss, vol. ii, p. xli.

[2] Twiss, vol. ii, p. xlii.

At the Council of Nottingham in 1194, William Longchamp, Bishop of Ely and Chancellor, was constituted, together with the admiral, supreme authority of all naval matters in the absence of the King (Richard I).

It will therefore be seen that maritime matters were not unknown to ecclesiastics in the Middle Ages. It therefore remains to prove what part, if any, the Church took in forming Medieval Maritime Codes. We shall endeavour to show:

1. That this foundation was laid in customary law arising from some common body of learned men, who, most probably were ecclesiastics;
2. That under Charlemagne the Bishop was the Head of the Town, and had from early times acted as an arbitrator;
3. That the "Missi" sent out by Charles the Great were generally dignitaries of the Church;
4. That the internal evidence of these Codes shows marked ecclesiastical influence;
5. That the external evidence supports it;
6. That the only class of men possessing the necessary education was that of the ecclesiastical Orders.

All this will not solve the mystery of the origin of these Codes, but it will probably show that the Church had no small share in their formation.

Let us first of all then go back to their source. Authorities are not wanting to prove that it is admitted on all sides that these Codes, as we have them in MS. form to-day, were the climax of centuries of custom. Gibbon

tells us that the *Assize of Jerusalem* was drawn up by Godfrey of Bouillon, who

"solicited the public and private advice of the Latin pilgrims, who were the best skilled in the statutes and customs of Europe."[1]

Dr. Bury, his editor, gives a detailed argument against the probability of the existence of a written Code at this time, and concludes that it was only in the form of "customary law and unwritten".[2]

The editor of the *Black Book* says:

"as far as can be gathered from most ancient collections of Medieval laws, it would appear that the earliest codes consisted of ancient customs . . . and to such Codes there have been added from time to time, as new questions of right arose which found no solution in the customs, the judgments of the Community assembled in their Common Council."[3]

Another writer has said : "Medieval Society was based on custom and precedent".[4] To these, other authorities might be added; but it is unnecessary. The Maritime Laws, like English Common Law, grew into a body of jurisprudence during the course of centuries. But the interesting part is that these customs should be found to be, more or less, the same in so many different States.

Now there was one body of men possessing an international code of moral law, their Religion, and an international language, Latin. That body of men, the only scholars of their age, were the ecclesiastics. It would therefore not be surprising if it were found that these men exercised a powerful influence in mercantile matters as they had done in other departments of jurisprudence.

[1] *Decline and Fall of the Roman Empire*, c. lviii.
[2] 1898 edit., vol. vi, p. 555. [3] Twiss, vol. iv, p. lxxxii.
[4] *Cambridge Medieval History*, vol. v, p. 121.

From the earliest years of Christianity the clergy had acted as judges of disputed questions among their followers.

Under Constantine, the bishop's arbitration was extended to all sorts of cases, and an attempt was made, as is shown by two enactments of this emperor, to convert it into a special form of procedure. In spite of official desire by the end of the fourth century to curtail this power, the bishop's jurisdiction was so powerful that this department of Church work was overwhelmed with civil cases.

"Not only Ambrose of Milan, who lived in the time of Theodosius the Great, but also Augustine, who belongs chiefly to the first quarter of the fifth century, complain of the heavy burden of judicial duties which they have to bear. Thus the Church secured the prerogative which was fraught with serious consequences, in the establishment of Episcopal Courts as an integral part of the secular judicial system with final jurisdiction in civil cases." [1]

By the time of Charlemagne, their official powers had considerably increased; so much so that they held a position equal with the "Comes" or Consul, whose authority was unusually extensive in judicial, fiscal, military, and administrative matters.

"Just as things secular and spiritual converged in Charles's kingship, so willing co-operation was desired on the part of local bearers of ecclesiastical and secular authority. The Comites were directed to be obedient to the bishops and to support them in all things. Rivalry often disturbed the harmony, and Charles caused inquiry to be made how an exact definition of the Comites (Counts) powers in spiritual matters and the bishops in secular, could be accomplished. But there

[1] *Cambridge Medieval History*, vol. i, p. 591, for an interesting and graphic picture of the Church's influence among the defaulters and depressed, *vide* vol. i, p. 566.

was never any doubt that bishops and Counts were to be equally regarded as important officials of the State. Louis the Pious caused the bishops regularly to make reports concerning the Counts and the Counts concerning the bishops.

"All officials under Charlemagne drew their authority from the monarch who was at the centre of the Universal State.

"That the centre might remain in living touch with distant parts and with provincial officials 'Missi Dominici' were appointed. These were the king's envoys.

"From A.D. 779 the 'Missi' appear with the quite general function of *justitias faciendas*, i.e. to preserve the right in every direction. They acted with the Counts and eventually against them for the administration of justice." They held their own court.

"Charles did not wish, so report the Annals of Lorsch, to send out as 'Missi', vassals who possessed no lands. He appointed archbishops, bishops, and abbots, with dukes and counts in whose case bribery need not be feared." [1]

Every year these envoys were sent out, generally an ecclesiastic and a layman together, to summon general assemblies at which, according to a decree of Louis the Pious,

"the bishops, abbots, counts, royal stewards, and representatives of the abbesses had to appear. At these provincial assemblies the envoy sought to obtain disclosures of the affairs of his province through the statements of those dwelling in the 'gaus' who were bound to truth by oath." [2]

In addition, the envoys held special courts of justice in the different judicial divisions of their provinces.

William II of England used the "Missi", and sent into the West Bishop Walkelin and his chaplain Flambard and two others to hold royal pleas in Devonshire, Cornwall, and Exeter.[3]

[1] *Cambridge Medieval History*, vol. ii, pp. 678 ff. [2] *Ibid.*
[3] Carter, *History of English Legal Institutions*, p. 63.

It may be assumed that the mercantile and commercial disputes among seamen and merchants of different nationalities would arise in the seaports and towns and come before the head of the township for his decision; who doubtless would confer with the *prud'hommes* or wise men.

Now there is evidence in plenty to show that this leading position in the town was generally held by the bishop.

"The towns were under a lord, usually a bishop, and it was to the bishop that the trading element in the town owed its first privileges.

"All the charters to towns, till the latter part of the eleventh century, were granted through the bishops." [1]

Commune

"It is in close connection with their ecclesiastical arrangements that we find the earliest germs of the later North Italian Communes.

"The bishop's city formed a 'plebs' by itself." [2]

By the end of the eighth century at Piacenza, the general assembly (contio) was held in the front of the old cathedral of Sant' Antonino. In this assembly it is the bishop who leads. He is

"chief citizen and a public official under the Carolingians, surrounded by a throng of vassals in town and country; it was the bishop, whether much or little privileged, who brought the formless assembly and the elementary machinery of quarters and 'vicinanze' into working order as a substitute for decaying government.

"It was the bishop who appeared at the head of his fellow-citizens in the work of co-operation and defence." [3]

[1] *Cambridge Medieval History*, vol. v, p. 119.
[2] *Ibid.*, p. 210. [3] *Ibid.*

Thus, in 904, King Berengar permits Hildegar, Bishop of Bergamo, and his "concives" (fellow-citizens) to guard against the heathen raids and the oppression of the great nobles by rebuilding the city walls and towers, and in the same diploma, to the bishop and his see were granted "those walls and the public jurisdiction within them". Other grants of the kind were to follow.

M. Lappenberg, in his Appendix to Sartorius, cites a document dated 1244, under which the Bishop of Utrecht took under his protection the merchants of Lübeck and Hamburg.[1]

By the time that custom had become unwritten law and these Codes had grown later into settled and written form, it would appear that the bishop was being largely displaced by the lay Consul or Comes, but there is evidence to show that there were ecclesiastical consuls as well as lay, even at this time.

It is asserted by Thorndike that:

"The opening of the twelfth century reveals a great change in North Italy. In the Lombard cities the towns have abolished the rule of the bishop, and have taken the reins of government into their own hands.

"At the head of the town government, in place of the bishop, appears a varying number of Consuls." [2]

This, however, is only partially true, for another authority says that although by the twelfth century the bishops had lost something of the Comital right in the new regime of the Commune, yet

"they were invaluable allies to their fellow-citizens. They at least held a position of unquestioned legality in the feudal chain: they could, even when not invested with Comital powers,

[1] Twiss, vol. iv, p. lxxxii. [2] p. 330.

yet at least for their Episcopal fiefs receive homage and conclude recognized feudal contracts. Thus the Archbishop of Pisa and the Bishop of Siena are all-important for the enlargement and formation of their Communes' dominion over the countries surrounding them. The lords of the countryside, new allies or vanquished enemies, surrendered their lands to the bishop and his city, or to the bishop alone." [1]

But before we come to the fully established office of Consul, we find another body of men, the *prud'hommes*, or wise men, taking an important part in the formation of Mercantile Law.

Consuls in North Italy arose at the beginning of the twelfth century, and these officers are evidence of a fully fledged commune. We are told that

"it has become increasingly plain of late years how they arose. According to R. Davidsohn, it was during the growth of civic freedom in the eleventh century that we find the 'bonihomines' (nobles), among whom were ecclesiastics, advising the bishop in his 'curia', the count or marquess in his 'placitum', and taking the lead in the 'commune colloquium' or assembly of the whole city." [2]

In the *Little Red Book of Bristol*, a Latin treatise on the "Lex Mercatoria", c. 12, we are told who may be the suitors of the court. The interest of this for our purpose lies in the fact that,

" 'Clerici Comites' are excluded." [3]

It is therefore certain that the bishops were at first the heads of the towns and ports. Later, we read of the "wise men" who assisted the bishop or lay consul; and among these *prud'hommes* were ecclesiastics.

[1] *Cambridge Medieval History*, vol. v, p. 223.
[2] *Ibid.*, vol. v, p. 220. [3] Carter, Appendix II.

Later, when the "Comes" or Consul was definitely established, we see that there were clerici comes: but it would appear, although the evidence is scanty, that the lay officer was becoming the regular official.

It is submitted that the foundation of these Medieval Codes was probably laid in the decisions of the bishops in that earlier period. This is not an impossible view, certain points favour it.

i. They are not highly technical, but are rather conformable to reason and equity. *Sola facti veritate attenta.*[1]

ii. They were not concerned with criminal jurisdiction, but only with the civil one.[2]

This is notably true of the ecclesiastical courts all through the ages.[3]

This foundation was later added to by the decisions of the Court with the aid of the *prud'hommes*. These wise men were often "skilled in the art of navigation", but the term is also applied in the "Consulato" to the clergy.[4]

In Venice the government was in the hands of the Doge,

"but around him in his solemn court for judgment and consultation gathered the notables, clerical and lay: boni homines as they were often called. They were assessors in the Courts, witnesses of deeds, arbitrators in voluntary jurisdiction, interpreters of local customs." [5]

This form of arbitration was found to be too cumbrous,

[1] *Court of Consulate of the Sea*, c. 36, and Twiss, vol. iii, p. xxvi.
[2] Twiss, vol. iv, p. 513.
[3] *Cambridge Medieval History*, vol. i, p. 566.
[4] *Consulato*, c. 249.
[5] *Cambridge Medieval History*, vol. v, p. 215.

and it gave place to the consular form of magistracy, first instituted in Barcelona in the thirteenth century.

However, when we come to consider the written Codes themselves, we find that whatever their dates, they still provide for adjudication of difficult questions, and it would appear that the ecclesiastical arbitrator was still appealed to for his decision.

In a MS. dated 1161, entitled *Statuta Pisanae Civitatis*, we are told that the early system of law in Pisa was the Lex Romana, and certain traditions of the Lex Longobarda, together with a body of unwritten customs which had been sanctioned from time to time by annual magistrates termed "Provisores" whose office it was to provide for the administration of justice on principles of equity in new cases which might arise from time to time between Pisan citizens, and between Pisans and foreign merchants.

The Provisores, then, were important people in so far as law-making was concerned.

Now, it may be, that these terms were used with different meanings, but it is significant that the term "Provisores" was an ecclesiastical one. They were "the purveyors, stewards, treasurers, or manciples of religious houses".[1]

Du Cange quotes a letter of Boniface VIII—*tempo* 1294—to illustrate the office of "Provisores Ecclesiarum" in these words:

"Nuncupati laici qui earum bona possessiones administratant."[2]

He would appear to be the bishop's representative to administer financial or business matters.

[1] Lloyd, *Encyclopaedic Dictionary*, vol. v.

[2] Du Cange, *Glossarium ad Scriptores Mediae et Infirmae Latinitatis*, vol. v.

"Provisor episcopi, qui ejus vices gerit nostris Grand Vicaire ut discimus—ex Itiner Adriani VI," etc.[1]

Another authority tells us that it refers especially to the Pope's or bishop's agent, or the steward of a monastery, a vicar-general, or deputy inquisitor.[2]

From the Pisan laws we turn to the *Court of the Consuls of the Sea*. In chapter xi we are given details of "appeal".

"If any one feels he has not had justice, he may appeal within ten days . . . and the said appeal is received and remitted to the judge of appeals from the consulate with the proceedings as carried on before the said consuls 'en loch de apostols', in which appeal there are to be stated the grievance, etc."

Now the only question of interest for us here is, what is the meaning of the Catalan *en loch de apostols*? Sir T. Twiss gives the English translation "in the place of formal apostles", but although he gives valuable foot-notes in commenting on the Code and a learned introduction to each of his volumes, besides a glossary of Catalan words, he makes no mention whatever of this passage.

P. B. Boucher, in his French translation of the *Consulat de la mer*, renders it *en lieu apostolique*,[3] but M. Pardessus criticizes his translation and says that Boucher knew neither the ancient customs nor Catalan.

"Ce qui prouve qu'il ne connoissoit ni le Catalan, ni l'ancienne procedure."[4]

Pardessus translates the passage,

"En place de lettres remissoires,"

[1] Du Cange, *Glossarium ad Scriptores Mediae et Infirmae Latinitatis*, vol. v. [2] Murray, *New Encyclopaedic Dictionary*, vol. vii.
[3] Vol. ii, p. 14. [4] *Collection Des Lois*, vol. v, p. 380.

and adds a foot-note:

"L'expression 'apostols' qu'on lit dans le text est relative aux anciens usages dont parle le Glossaire de Ragueau, voc: Apotres d'apres lesquels le juge 'a quo' delivroit les lettres remissoires: on dit ici qui l'envoi des pieces du proces en tiendra lieu." [1]

But reference to the *Glossaire* of Ragueau shows that Boucher was not so far from its historical meaning. Pardessus does not state what edition of Ragueau he is referring to, but, under the term "Apostres" there is the following information:

" 'APOSTRES', en l'edit de l'an 1539, art. 117:
"Sunt Apostoli et libelli dimissorii, literae dimissoriae, relationes quibusdam locis, quae dantur ab eo a quo appellatum est, ad eum qui appellatur a reo vel actore. Condemnato, quibus totius rei cognitionem in eum transfert appellatione recepta. His utuntur in foro Ecclesiastico, non in foro civili aut seculari. Alii sunt appellatorii libelli" (Schedule appellatoire).[2]

It is therefore obviously of ecclesiastical origin, and the term *literae dimissoriae* reminds us of that link of the past with the present in the "letters dimissory" used to-day by one bishop when asking another bishop to hold the examination of and grant ordination to a candidate for Holy Orders.

From the office of judge, we turn to the place of the Court.

In Art. 2 of the Amalphitan Table it says that if the mariner having received advance of wages is not willing to sail upon the voyage, the managing owner may require

[1] *Collection Des Lois*, vol. v, p. 380.
[2] *Glossaire du Droit François*, François Ragueau. Edited by E. De Lauriere, 1882.

that the mariner shall pay twice the amount advanced, of which the managing owner is to have one half "and the Curia the other half:"

"cujus dupli medietatem habeat patronus, et aliam medietatem habeat *curia*."

Again, in Art. 23. "Likewise when the voyage is finished and the expenses have been deducted, the managing owner ought to give an account to the mariners and associates *in curia* in their presence."

Now doubtless the word "curia" may be used indefinitely of any court, but the civil court was technically the "Curia Regis", but the "Curia" was the Bishops' or Ecclesiastical Court.

Z. N. Brooke says:

"It will be seen that the Papal Court, which was international in its constitution and sphere of operation, came to be called the Curia. . . . Alexander III instituted the practice of including bishops from different parts of Europe among the cardinals, for the regular duties and residence of such cardinals were no longer in Rome itself." [1]

When the Admiralty Court became fairly established, whatever its date, it seems that the clerk of that Court was, in some if not most cases, in Holy Orders.

We are told that the laws of Oléron, containing the good usages, customs, and judgments of their ancestors, which had been approved with the authority of the mayor and *prud'hommes*, were reduced to writing,

"compiled and adjusted by William Guischos, at present clerk of the Commune of Oléron." [2]

[1] *Cambridge Medieval History*, vol. v, Introduction, p. viii.
[2] C. 1.

Now the word "clerk" here is the same as that used in another connection for the clergy and not the word[1] used for the town clerk who is spoken of as *le comun clerke de la vyle*.[2]

If, then, it be granted that the bishops, the Bishops' Courts, and the clergy as lawyers or writers, played no small part in the formation of these laws, then we may look for some trace of their religious opinions in these written Codes; and we shall not look in vain.

Holy Church

Under the duties of the Admiral we find in the *Black Book of the Admiralty* that

> "first he ought to proclaim that no man be so bold as to rob or pillage the Holy Church, nor to ravish any woman upon pain of death."[3]

The penalty for anyone, except a priest, who touches "The Sacrament of God's Body", or even the vessels containing such, is death.[4]

The Constitution of the Commune of Royan lays it down that the twelve sheriffs and twelve councillors shall swear at the commencement of their year of office "that they will maintain the rights of the Holy Church".[5]

The Holy Trinity

In the earliest dated Code compiled in any of the maritime cities of the Baltic, which contains exclusively maritime laws, the opening words are:

[1] *Oléron Judgments*, 46.
[2] *Domesday of Ipswich*, c. 78.
[3] Twiss, vol. i, p. 25.
[4] *Ibid.*, p. 282.
[5] C. 1.

"In the name of the Holy Trinity, the Father, the Son and the Holy Ghost—greeting and good wishes for Everlasting Salvation in our Lord Jesus Christ." [1]

The Ordinances and Customs of the Sea, published by the Consuls of the city of Trani, A.D. 1063, begins:

"In the name of the Omnipotent GOD; Amen."

THE PRIEST

Chapter ccxlix of the *Consulato*, which deals with an "Error of account alleged by the part-owners against the heirs of the managing owner", says:

"The dispute ought to be referred to the decision of certain persons who have the cure of souls, and it ought to be inquired if the deceased had a confessor in that place with whom he confessed himself or had himself confessed, and if he shall be found, the said dispute ought to be submitted to the decision of the confessor: and if by any chance a confessor cannot be found, the dispute ought to be submitted to the decision of men who fear GOD and the soul, and who are under vows of religion and are honest men and of good reputation. And when the said honest men have undertaken to settle the dispute, they ought to have before them all the part-owners and they ought to have an oath from each of them that they will speak the truth respecting the said error of account or deficit . . . and the said honest men ought to have regard to the character and quality of the said part-owners."

NON-COMBATANTS

"That no man be so hardy . . . as to slay a man of Holy Church or religious order except he be armed, upon pain of death." [2]

"That no man . . . slay or enforce a woman, and that no

[1] *Vide Laws of Osterlings and Laws of City of Hamburg.*
[2] *Black Book*, "Statutes for Time of War", s. 2.

man take as prisoners, women or man of Holy Church or other religious (order) except he be armed, upon pain of imprisonment and his body at the King's will."[1]

We are reminded in this Decree of the Council of Clermont, 1095, and the Canon "de Treuga", where the immunity of non-combatants is decreed; also of the Canons of Coventry, 1237,[2] where it is asserted that if a layman strike a clerk, he must go to Rome for absolution unless he be at the very point of death.

Works of Charity and the Souls of Men

The Admiral is to take maritime deodands and administer half of the value for the soul of the deceased, and the other half for the widow and relatives.[3]

In regard to shipwreck goods, part of the value is to be given for prayers to God for the soul of the deceased "or to marry poor maids, or to do other work of mercy after reason and conscience".[4]

If a passenger die on board, the managing owner is to keep the money of the deceased for three years in case of a claim being made, but after that, if the money is unclaimed

"he ought to give it for the repose of his soul in the presence of the bishop of the territory, and the ship's clerk is bound at the end of this period to make a declaration to the bishop . . . and set forth in writing the amount of money and all the effects of the deceased."

This copy was to be shown to

[1] *Black Book*, "Statutes for Time of War", s. 3.
[2] A. L. Smith, *Church and State in Middle Ages*, p. 13.
[3] Twiss, vol. i, p. 85.
[4] *Oléron Judgments*, 27; and *Consulato*, c. 207.

"the bishop or his coadjutor, or to the clergyman who had the cure of souls in that place, and the clergyman ought to enter it in the register of the Church." [1]

Fasting

"The managing owner ought to give flesh meat to the mariners to eat, on three days of the week; that is to say on Sundays, Tuesdays and Thursdays . . . on other days, not meat, but porridge, etc." [2]

It will be seen that this provides for the ancient custom of fasting on Wednesdays and Fridays.

Pilgrimages

In Article 11 of the *Maritime Ordinances of Trani* we are given the three reasons for a mariner leaving his ship:

"i. and ii. refer to promotion to a higher position.
iii. 'if on the present voyage he should have made a vow to go to St. James's or to the Holy Sepulchre or to Rome'."

This is also contained in the *Consulato*.

Blasphemy

According to Article 9 of the *Ordinances of Trani* there were only four reasons which justified a master in dismissing a mariner, and the first was for "Blaspheming God".

[1] *Black Book*, "Customs of the Sea," c. 72; also in the *Ancient Statutes of Marseilles*, Bk. IV, c. 24.
[2] *Consulato*, c. 100.

Sanctuary

In Article 28 of the *Ordinances of Trani*, and chapter cxx of the *Consulato*, a form of sanctuary is provided on board ship. Should the managing owner quarrel with a mariner and attack him, the mariner is to

"run away to the bow of the ship and place himself by the side of the chain; and if the managing owner passes the chain, he ought to run away to the other side . . . for the managing owner ought not to pass the chain."

It cannot be proved that this was definitely copied from the law of "Sanctuary", but it would seem that it was akin to it.

Love of God

Chapter cxlii of the *Consulato* prescribes that if any skipper fraudulently puts on board more goods than the agreement allows, endangering the boat, the punishment which follows is that of those who, under

"the semblance of friendship expose anyone to the peril of death."

Therefore the goods which have not been freighted shall be divided into three parts:

"i. for the managing owner.
ii. for the local authority in whose custody the offender is placed.
iii. 'Another third shall be assigned for the love of God to ransom captives.' "

The compiler of the *Consulato* ascribes a religious motive to those who were responsible for the early decisions of maritime cases. In chapter ccl we read:

"therefore our predecessors of olden time, who first voyaged about the world to divers parts and places became aware of and understood the aforesaid opinions and took counsel to reconcile them . . . therefore they have not grudged their trouble . . . in order to have merit with God and love and favour with men."

Bad Christians

"Here you shall have the law as regards a bad Christian who carries forbidden goods to the land of the Saracen, and what the magistrate ought to do to the man who carries them,"

so states Article 5 of the *Maritime Assizes of the Kingdom of Jerusalem.*

"If it happen that a mariner or merchant carries forbidden goods to the country of the Saracens, such for instance as armour, coats-of-mail, iron-pieces, lances and projectiles, axes or spears of steel or iron, and he is arraigned in the Court of the claim . . . (if proved guilty) all that he possesses ought to be confiscated to the lord of the land, and he ought to be condemned . . . to be hanged . . ." [1]

The principle of "Merces illicitae", as regards commerce with barbarian nations was affirmed in the Code lxii, t. lxv, by an ordinance of the Christian emperors, Honorius and Theodosius. As regards trade with the Saracens, it was formally forbidden to Christians by Canon 24 of the Third Lateran Council, 1179.

The war-material forbidden as contraband in this Article 5 is, in substance, the same as Section 7 of the ancient Bull, "In Coena Domini".

"Wager of Battle"

In Article 1 of the *Assizes of Jerusalem*, wager of battle is forbidden in the following words:

[1] *Assizes of Jerusalem*, Art. 5.

"Know ye well . . . in the Court of the Sea, the wager of battle is not admitted as a mode of proof, nor in support of any claim during the voyage."

Although this method of proof was dear to the hearts of civilians, it was condemned by the Church as early as the Council of Valence, 855.

We now come to what is probably the most important contribution of Medieval Sea-laws to international law and peace. This will be found in the regulations regarding:

"Shipwrecks"

The editor of the *Black Book of the Admiralty* has said that:

"There were necessarily two conditions precedent to the establishment of international commerce in Europe on a systematic scale, the fulfilment of which might have long been deferred, had not the Crusades intervened, namely, the renunciation on the part of the local authorities of the 'Right of Wreck', which Dryer justly styles 'Inhumanum jus naufragii', under which not merely the goods of the shipwrecked merchants and mariners were forfeited to the lord of the soil, but their persons were often sold into slavery; and, in the second place, the permission on the part of the local authorities for the foreign merchants and mariners to settle their controversies according to their own laws." [1]

First in importance, it is recognized that the Church will punish those who take part in the wilful wrecking of ships; but this is not all, for even those who shall seize shipwrecked goods or shall purchase them, shall reap censure.

Judgment 29 of the Laws of Oléron says that any

[1] Vol. iv, p. lxxix.

"disloyal villains or traitors (false pilots) who shall guide ships on to the rocks willingly to their knowledge and of certain malice" and then feign to succour the poor people, or if anyone shall take part of the wrecked goods, even in places where "the accursed and damnable custom runs without reason that of the rescued goods, the lord of the place takes one-third or one-quarter and the salvors, another one-third or one-fourth, and the residue goes to the master and mariners . . . seeing this is contrary to the commandment of GOD Omnipotent, notwithstanding any custom or ordinance, it is said and *decreed* that the lord, the salvors and the others who shall take anything of the said goods, shall be accursed and excommunicated and punished as robbers."

There are similar prohibitions in the *Maritime Law of the Osterlings*, Article 14; *Wisby Town Laws*, Articles 3 and 13; *Assize of Jerusalem*, Article 17.

Now this is the substance of a decree of the Lateran Council of 1179, and of Nantes in 1127.

It has been said by an authority that the article quoted above, with its Anathema of Excommunication

"savours of the hand of a wise clerk, who, by a pious fraud was preparing the way for the authoritative assertion of the principles subsequently embodied in the Ordinances of Francis I of A.D. 1543";[1]

and to this he adds

"it is impossible to regard this article as embodying the decision of any Maritime Court, such as administered the Law Maritime of Oléron."[2]

This opinion, however, would seem to give insufficient weight to certain facts.

I. That the Canon Law was not without its influence on Maritime Law.

[1] Twiss, vol. ii, p. lxxxi.

[2] *Ibid.*, p. 463.

II. That an important Ecclesiastical Court had condemned it nearly four hundred years before the Ordinance of Francis I.

III. That Judgment 46 equally condemns the clergy in these words:

"'Even if they are bishops or clerks' who should offend in regard to the law of shipwreck, they 'shall be deposed from their offices and deprived of their benefices'."

In any case, whether the judgment of a later Court, taken from the Canon of the Lateran Council, or "the pious fraud of a wise clerk" well in advance of his generation, this article found its way into most of the Medieval Maritime Codes. Its ecclesiastical origin seems beyond question.

By the thirteenth century this branch of Maritime Law was widely accepted. At a League of Merchants held at Gotland, a resolution was passed forbidding

"all persons under penalties from purchasing or selling goods plundered from wrecked vessels, and excluding from the League of Merchants (de Societate seu Consodalitate mercatorum) every city which should not enforce these prohibitions." [1]

The seal of all the merchants was affixed to the Resolutions on St. John the Baptist's Day, 1287,

"in order to give them perpetual force and effect."

The city of Reval, which had not come into line with the League, was to be excluded from the "fellowship of Merchants" if it had not complied with this regulation before the next coming festival of St. John the Baptist.

[1] M. Lappenberg's edition of Sartorius, *Urkundliche Gesch. der Deut. Hanse*, ii, p. 152, quoted by Twiss.

The ecclesiastical influence is seen perhaps even more forcibly in Judgment 47 of the Laws of Oléron, where this law of wreckage is amplified in these words:

"It is to be understood that the above refers to those who are not pirates or Turks or enemies of the Holy Catholic Faith. For in such cases as pirates, pillagers, sea-rovers or Turks, or others opposed to and enemies of our Holy Catholic Faith, everyone may take from such manner of men as from dogs, and may strip them and despoil them of their goods without punishment."

Having thus dealt with the internal evidence to the ecclesiastical influence on these laws, we must now turn our attention to:

External Evidence

Mention has been made of the fact that the bishops preceded the lay Consuls, and these, together with the Episcopal Missi, must have had some influence on the formation of these sea-laws. Now in regard to the external evidence it is interesting, even if it proves nothing, that in the MS. Foscarini, No. 184, in the Imperial Library at Vienna, written in the sixteenth century (the only MS. of the Amalphitan Table quoted by Sir Travers Twiss) at the end of these laws are the "Chronicles of the Bishops of Amalphi from the year . . . of Our Lord 339 to 1530."

But the preamble of this Code suggests that this is more than an accident, for it states that they form a revision made in 1274 at the instance of the Archbishop of Amalphi, of the ancient customs of that city which had been collected for the first time and reduced to writing in the year 1010.

Much the same thing applies to the Code of Livonia, for tradition has it that it was written at the instance of the Bishop.

"Tertium locum occupat Codex Livonicus ann. 1254, scriptus est ad instantiam Alberti II, Episcopi Regensis, communicatus cum ordine Teutonico ac urbis Memelae Senatu . . . etc." [1]

If we turn to the *Assize of Jerusalem* we find it on record that according to one account, this Code was compiled by Godfrey of Bouillon, with the counsel and approbation of the Patriarch and barons, of the clergy and laity.[2]

Another authority tells us that the *Assize* was compiled by the Patriarch of Jerusalem and the Gallic chieftains.[3]

Whilst our thoughts are on the Holy Land, it will not be out of place to point out that the Crusades, a religious movement, influenced Maritime Law in its terminology. The designation of "Admiral" cannot be traced in Christian Europe before the time of the Crusades; moreover, its derivation must be sought in the language of the Saracens. It first appears in the *Annals* of Eutychius, Patriarch of Alexandria in the tenth century. Spelman says:

"In regno Saracenorum quatuor praetores statuit, qui admiralli vocabantur." [4]

The editor of the *Black Book* tells us that

"there is no reason to believe that the term 'Admiral' had become familiar to the Christian nations of Europe before the Fourth Crusade (1147), when the monkish chroniclers Latinized the Arabic title of Emir or Amir." [5]

[1] *Black Book*, vol. iv, p. cxliii.
[2] Gibbon, *Decline and Fall of the Roman Empire*, c. 58.
[3] Pardessus, *Us et Coutumes*, vol. i, p. 264.
[4] *Encyclopædia Britannica*, 9th edit., vol. i, p. 155. [5] Bk. II, lxiii.

After this the Admiral is frequently mentioned in these Medieval Codes.

The Church also contributed in another way to these laws in so far as the ecclesiastical buildings were used as Law Courts and Law "Record" offices or Repositories.

When King Peter IV formally sanctioned a code of procedure for the Court of the Consuls of the Sea at Valencia in 1336, this procedure provided for the

"annual election of two Consuls of the Sea and a Judge of Appeal, on every Christmas Eve, to be held in the Church of Santa Tecla in Valencia."[1]

When the Venetians procured from Queen Catherine in 1489 the island of Cyprus, they allowed the "Assizes of the Kingdom" to remain in force, and the text of the laws of the High Court was deposited in the treasury of the Cathedral of Nicosia.[2]

The text of the *Assizes of the Kingdom of Jerusalem*, according to tradition, was sealed and signed on each page by the Patriarch (among others) and was deposited in the Holy Sepulchre from whence it took the name "lettres du Saint Sepulcre". With the Fall of Jerusalem in 1187, the "Assize" is supposed to have perished.[3]

Before turning our attention to England, mention must be made of an important document, in spite of much recent criticism of its veracity.

At the end of the text of the *Consulato* is found an appendix called "the Acceptations" or, as some writers style it, "the Approbations". It asserts some seventeen propositions; the chief of which for our purpose are:

[1] *Judicial Order of the Courts of the Consuls of the Sea*, c. i.
[2] Twiss, vol. iv, p. cvi.
[3] Pardessus, *Us et Coutumes*, vol. i, p. 263.

i. That the *Consulato* was approved by the Romans at Rome in 1075 in the Minster of St. John Lateran:

iv. In 1118 at Pisa in St. Peter's on the Sea:

xi. In 1215 by the Republic of Venice in the Church of Santa Sofia:

xiii. In 1225 in the city of Messina, in the Church of Santa Maria the New, in the presence of the Bishop of Catania.

To this may be added a statement in support of the first proposition from the *Life of Pope Gelasius II*, by Abbé Gaetano, in which he says,

"that in the non-existence of any laws of the sea, the Pisans drew up, in the latter part of the eleventh century, a body of maritime regulations which they, first of all, submitted to the approval of Pope Gregory VII in the Church of St. John Lateran at Rome, A.D. 1075." [1]

Much doubt has been thrown upon the trustworthiness of these statements, but two points may be mentioned in their favour. The first is that they have been accepted by various

"learned Italian publicists, among whom may be named Valeschi in his treatise on the Ancient Constitution of the City of Pisa, the advocate Iorio in his preface to the Code of King Ferdinand, and Baldasseroni in his Dissertation on the necessity of compiling a code of Commercial Law; and, to these may be added Azuni in his Code of Maritime Law, and Lampredi in his work on the Commerce of Neutrals." [2]

Secondly, it must not be forgotten that Gregory VII was "one of the most learned jurisconsults of his age".

[1] *Annals of Muratori*, "Rerum Ital. Script," l. iii, p. 402, quoted by Twiss.

[2] Twiss, vol. iii, p. xxviii.

When we turn to England, we find that down to the early part of the reign of Edward III, Admiralty matters were brought before the Chancellor—an ecclesiastic—from the Mercantile Court. In fact, according to the great jurist Hale,

"piracy, reprisals and letters of marque were considered specially within the purview of the Chancellor and to be the most noble and eminent piece of his jurisdiction." [1]

A comparison of the principles of the Chancery with those of the Law Merchant reveal a striking similarity.[2]

It will be observed that all this evidence does not settle the question as to where, when and by whom these Maritime Codes were formulated; but it is submitted that the reasons given are sufficient to show there was a strong ecclesiastical influence behind them. Two questions must, however, be dealt with briefly.

It has been asserted that these laws were formulated by the Maritime Courts; but against this theory it is maintained that there is but little evidence of value to substantiate it, and, in any case, it would seem that a great mass of customary law had come into existence first. The other question is that of the influence of the Roman Law. Let it be admitted that there are certainly traces of that system of jurisprudence. There are also traces of it in our English Law. In the Medieval Codes, however, it is Roman Law much modified, and operating in a totally different environment. The mariner is no longer a slave of the owner of the vessel as in Ancient Rome, but, in the Middle Ages, he is spoken of as the

[1] Carter, p. 176.

[2] *Ibid.*, p. 260.

"companion of the ship",[1] and is to be consulted by the managing owner when the question of "pledging ship's apparel" arises or when the question of departure is to be settled:[2] and there are other instances. It must also be remembered that the Roman Canon Law was to some considerable extent the fruit of the Roman Civil Law. It may well be asked what class of men had the greatest knowledge of jurisprudence in the early, or even later part of the Middle Ages, and what institution had the best chances of diffusing international customs.

The first part of the question is answered by Sir R. Lodge in his book *The Close of the Middle Ages*.

"The Medieval period was a period of ignorance. Learning and education were for the most part monopolized by the clergy, and were, in their hands, bound down by prescription and by ecclesiastical authority. . . . Moreover, such literature as existed was in Latin, and that in itself was sufficient to close it alike to nobles, burghers, and peasants, most of whom were unable to read or write even their native tongue." [3]

A quotation from Z. N. Brooke will equally well cover the second part of the question.

"The Church alone was Universal, European, International." [4]

The study of the Medieval Maritime Laws is one which is as fascinating as it is difficult and problematical, but there would seem to be sufficient evidence to maintain that whatever their history, they owed something, perhaps much, to the influence of the Church.

[1] *Oléron Judgments*, i. [2] *Ibid.*, ii.
[3] p. 517. [4] *Cambridge Medieval History*, vol. v, p. 1.

THE LEAGUE OF NATIONS—A COMPARISON

THE objects of the League of Nations Covenant of 1919 must, in theory at least, meet with the warm approval of all men who desire peace, but it must not be assumed that the underlying principles are without precedent. It has been claimed for the League that

> "there is no precedent at all comparable with the present endeavour. There has never before been a permanent organization like the League's Secretariat, or definite machinery for international action like that of the Council and Assembly."

And doubtless this is true, if the League be regarded in all its small details, but the statement as it stands certainly needs explanation, for it would seem beyond much doubt that the roots of the tree were planted in Europe by the Early Christian Church, nourished and strengthened by the Medieval Christian Commonwealth, to bring forth the fruit of international peace through the League of Nations. It is not suggested that those powers which framed the League's Covenant had this organization in view, but it is submitted that the germ idea was planted centuries ago in the Christian Church.

Whilst the conditions and needs of the twentieth century are not comparable, from one point of view, with those of the Middle Ages, and the Pope as Head of the Church claimed as Vicar of Christ, a position unparalleled at any time, yet there was much in the Medieval Commonwealth of Christian people which forms a striking similarity with the present League of Nations.

This can be demonstrated by a rough and general

comparison between *The League of Nations Covenant* and *The Medieval Church and its Canon Law.*

As the different parts of the Canon Law upon which we shall touch have already been discussed in their respective sections, only very brief allusions will be necessary here.

To save repetitions, small type will be used for those remarks which refer to the Church.

The PREAMBLE of the Covenant establishes, among other things, the authority of International Law as the "actual rule of conduct among Governments", and to the end that war may be avoided.

In the Middle Ages the only common law which was at all comparable with modern International Law was the Canon Law, and the Church judged international disputes by its authority.

In spite of inconsistencies, the Church did seek to minimize and soften war, as is shown in the chapter "Temperamenta Belli."

THE CONSTITUTION

It has a permanent seat at Geneva.[1]

In the earlier period, it was Rome.

The official languages of the League's World Court are English and French.

In the former League it was Latin, and continued such till the middle of the eighteenth century, and was the medium through which "Christianity and civilization were conveyed to the West." The Pope still uses Latin for all international acts.

"The formation of a permanent International Secretariat

[1] Art. 7.

is something quite new in the history of the world", writes Whelen.[1] The Secretary-General summons all meetings of the Council and of the Assembly and is responsible for the co-ordination of the whole of the League's activities.[2] It is claimed that this will give a corporate and continuous existence, "which all previous leagues lacked".[3]

Here, again, an explanation is necessary, for whilst the assertion is true of all previous Leagues as such, yet the fact must not be overlooked that the Pope and his officials formed a "corporate and continuous secretariat", or at least something similar.

Sir Geoffrey Butler says that "this scheme differs from all its predecessors in that it does not erect a cast-iron machine for settling the quarrels of nations. It is more human and more sensitive than that".

All this may truly be claimed for the Medieval Church.

The Assembly[4] of the League shall consist of Representatives of the members of the League.

The Church summoned its Oecumenical Councils: representatives of all nations, as already discussed.

The Council, a smaller body, "shall consist of representatives of the principal powers, together with representatives of four other members" of the League.[5]

The College of Cardinals was a representative body and formed the smaller Council of the Church.

[1] p. 20. [2] Art. 6. [3] Whelen, p. 21.
[4] Art. 3. [5] Art. 4.

"*The Expenses* of the League shall be borne by the members of the League in the proportion decided by the Assembly".[1]

The Church drew its finances from all members of that Society, and for the Crusades the Pope gathered a tax from all Christian nations.

The work of the League consists of the following:

"Plans for the establishment of a Permanent Court of International Justice." [2]

Sir Robert Phillimore speaks of the Medieval Church as "the Common International Tribunal", and the section on Arbitration will amplify such an assertion.

The first case to come before this Court is of great interest. It was a dispute between Great Britain and France on the one hand and Germany on the other. The latter country had refused to allow the s.s. *Wimbledon* to pass through the Kiel Canal with war-material on her way to Poland. It has been claimed that this is the "first example in history of the arraignment of a Sovereign State by one or more other Sovereign States before an International Court".

But this can hardly be correct, for in 1297 Edward I and Philip the Fair submitted their quarrel to Pope Boniface VIII, although not without some protest from Philip, and not with the greatest measure of success: yet two Sovereign States stood before an International Tribunal. Other instances are given in the appropriate chapter.

[1] Art. 6.

[2] Art. 14.

Revision of Treaties

Article 19 of the Covenant says that revision of treaties which have become inapplicable, should be considered by the League, if the continuance of such would endanger the peace of the world.

The Pope on two occasions, at least, absolved kings from treaties.

Article 18 provides for the registration of all treaties and international engagements with the League Secretariat.

Papal Chanceries in the Middle Ages fulfilled something of the same kind of purpose.

Mandates

Article 22 empowers the League to grant to certain countries, those backward territories as "Mandates".

In 1493 Pope Alexander VI, by a Bull apportioned out the New World. The Papacy often claimed that certain monarchs held their lands as fiefs of the Church.

Arms

Article 23 asserts that the "League is entrusted with the general supervision of the trade in arms and ammunitions with the countries in which the control of this traffic is necessary in the common interest".

The Canon Law forbade the supply of arms to Saracens and heathen or uncivilized nations, as pointed out under "Temperamenta Belli".

Social Activities

The social activities of the League include abolition of the "white slave traffic" and slavery.

The Church protected women and did much to abolish slavery.

Article 23 secures freedom of transit.

The Canon Law excommunicated pirates, etc.

In 1926 the "Reform of the Calendar" was discussed.

The date of Easter was a controversy in the Early Church, but was fixed by Canon Law.

The Advisory Committee of the League has dealt with the age of marriage and consent.

These were fixed in the Middle Ages by the Church, and the decisions were accepted by the whole of Christendom.

Article 24 proposes to place International Relief work under the control of the League.

This was done by the Red Cross Orders of Chivalry, which received authority and commission from the Church.

The Question of War

The question of war is dealt with by the Covenant. After discussing the advantages of Articles 12, 13, and 15, Whelen sums up by saying: "Thus, only some wars are prohibited, not all wars." [1]

This is the substance of the Canon Law which incorporated the dicta of St. Augustine regarding just wars.

[1] p. 41.

Sanctions

It may be asked what steps the League proposes to take to enforce the Covenant. Article 16 supplies the answer: "Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13, or 15, it shall, *ipso facto*, be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not. It shall be the duty of the Council in such case to recommend to the several governments what effective military, naval, or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League."

In other words, the offenders are to receive commercial, financial, and social excommunication: then if this fails, there will be an international army to enforce the law.

Except that the League's sanctions are purely secular, and those of the Church were spiritual—although the spiritual and secular merged into one in the Middle Ages—there is very little difference, if any, in principle. There is to be economic ostracism on the modern side, but in the Middle Ages there were excommunications and interdicts—religious ostracism.

So far we have discussed the smaller details which present a striking similarity; but there remains that difficult question as to what "status" the League of Nations does, or will occupy, and its comparison with that of the Medieval Church.

It will be maintained by many that the status of the two institutions bears no similarity. It is generally asserted that whilst the Church claimed to be a super-State, the present League is not a separate political unit having jurisdiction over other States and depriving them of their sovereignty, but that it is an "association of Nations commonly agreeing to limit their freedom of action on certain points, in order to promote international co-operation and to achieve international peace and security".[1]

As to what may possibly be the future development in the Constitution of the League, it would serve no practical purpose to prophesy, but with the great increase in the inter-relationship of the whole world, the co-operation of States for commerce and comfort, the advent of wireless and aeroplanes, the breaking-down of national barriers, and the fostering of international brotherhood, it may be that the League will approximate more closely to the Medieval Church conception than it does to-day.

The "sanctions" of the League, together with the possibility of an international army, may suggest to some that the essentials of a super-State are not lacking at the present time. This view finds some support in a series of lectures recently given by London University professors, where it was definitely laid down that "there has been for a long time past a tendency to return to the Medieval conception of Society as an expression of the moral consciousness. Equally is there now a tendency to turn toward the idea of a world-State. We are perhaps drawing nearer to the thought of the Middle Ages".[2]

[1] Whelen, p. 7.

[2] *Medieval Contributions to Modern Civilization*, lecture by J. W. Allen, p. 267.

Be that as it may, and putting aside altogether this particular aspect and making all due allowance for the difference between the Middle Ages and the present century in regard to time and circumstances, there is much that is parallel in the Medieval Church and the League of Nations.

CONCLUSION

HAVING tried to trace in some detail that part which the Medieval Church played in laying the foundations of international peace, and in giving to the nations a Common Law, it may be well asked: "What are the lessons such a study has to teach in relation to our modern problems of world peace?" Sir W. G. F. Phillimore has reminded us that

"at the future Congress, history and philosophy must be the handmaids of diplomacy." [1]

The Medieval Church, then, should have something to teach us. Indeed it has. In spite of its failings and human weakness, it contributed to peace and law in no small measure, and the secret of its influence and success was twofold. Herein lies its lessons for to-day.

The first is, that reasonable and lasting peace is based on moral or spiritual grounds rather than on that of material force.

"Not by might, nor by power, but by My Spirit, saith the Lord of Hosts." [2]

World brotherhood is more than a dream; it is the essential teaching of the Universal Church of Christ.

A very large share, then, of founding world-peace is in the hands of the Christian Churches. Peace will come, not by a system of a "balance of power", but by the power of mutual good-will and unselfishness. This is being

[1] *The New Europe*, vol. i, p. 268, quoted in *Three Centuries of Treaties of Peace.* [2] Zech. iv. 6.

recognized to-day by the great authorities in a far greater degree than at any time since the Reformation.

The first lesson, then, is "the opportunity of the Christian Churches".

But the second lesson—what is that? It is one which must bring sorrow and shame to the heart and mind of every true follower of the Prince of Peace.

The Christian Churches will never bring their message of peace with any success to a divided world, until the Churches themselves are united. A Church rent in pieces is not likely to heal a torn world.

"A house divided against itself cannot stand."[1]

The Medieval Church could claim in a large measure—although not so great as some would have us believe—that it had uniformity among its members, be they Europeans, Africans, or Asiatics. That is not so to-day. Indeed, it is not possible in this generation, and to many Christians it is not even desirable. But it should be remembered that "unity" and "uniformity" are not synonymous to-day, although this was the case in the Middle Ages.

Unity among Christians is that great essential for which our Lord prayed.

"I pray that they all may be one." [2]

It should not be difficult for children of one Father, with one hope in Christ, to agree to differ on those matters, which, after all, are of secondary importance in comparison with the peace of the world and our witness for Christ. Let the Christian Churches stand side by side in one

[1] St. Mark iii. 25. [2] St. John xvii. 21.

common effort, with a consolidated and not dissipated influence, to work for, pray for, live for that peace which the Saviour of men came to bring, and they will not labour in vain. Our Master prayed that we all might be one. Why?

"that the world may believe that Thou hast sent Me." [1]

It is our witness for God.

Mr. Lloyd George, speaking at a meeting in July 1928, said:

"If the Churches of Christendom had come together and said 'Halt' in 1914, the Great War would not have taken place."

Dr. Scott Lidgett has expressed his complete agreement with this declaration, but has qualified it by saying,

"I would point out that it was not the will, but the machinery, that was lacking on that critical occasion. The strongest possible representation of the Anglican Church and of the Free Churches of this country was at that moment on the way to Constance to meet the representatives of the German Churches in support of peace . . . but they were arrested on their arrival by the military authorities. It is well known that the outbreak of war broke the heart of Pope Pius X, and he died a few weeks later." [2]

The fact is that the Churches of Christendom lacked that unity which made the working of "machinery" referred to by Dr. Lidgett out of the question.

So much has been said about the failures of the Middle Ages that it is well to remember that the Church of that time did exercise a united and not inconsiderable influence towards world peace.

The world to-day is weary of war. It has seen its futility, its barbarity, and its costliness, but the world soon forgets and the passions of men are strong.

[1] St. John xvii. 21. [2] *The Daily Express*, July 27, 1928.

Let the Churches of Christendom be true to their mission.

"Blessed are the peacemakers, for they shall be called the children of GOD." [1]

If these Medieval studies can in any small way help forward that great cause, the writer will have been amply rewarded.

[1] St. Matt. v. 9.

EPILOGUE

"To you and me and men like ourselves is committed, in these anxious days, that which is at once an awful responsibility and a splendid destiny—to transform this modern world into a Christian society, to change the socialism which is based on the assumption of clashing interests into the socialism which is based on the sense of spiritual union, and to gather together the scattered forces of a divided Christendom into a confederation in which organization will be of less account than fellowship with one spirit and faith in one Lord—into a communion wide as human life and deep as human need—into a Church which shall outshine even the golden glory of its dawn by the splendour of its eternal noon."

EDWIN HATCH,
Bampton Lectures, A.D. 1880

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